

No. 10149

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United States ↓  
Circuit Court of Appeals  
For the Ninth Circuit.

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STANLEY LABORATORIES, INC., and ED-  
WARD A. BACHMAN, an individual trading  
as STANLEY LABORATORIES and as  
STILLMAN PRODUCTS COMPANY,

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

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Transcript of the Record

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UPON PETITION TO REVIEW AN ORDER OF THE  
FEDERAL TRADE COMMISSION

FILED

APR 29 1943

PAUL P. O'BRIEN,  
CLERK



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FEDERAL TRADE COMMISSION





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America  
Before Federal Trade Commission

Docket No. 4130

In the Matter of

STANLEY LABORATORIES, INC.,  
a corporation, and

EDWARD A. BACHMAN, an individual  
trading as

STILLMAN PRODUCTS COMPANY and as  
STANLEY LABORATORIES.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Stanley Laboratories, Inc., a corporation, and Edward A. Bachman, an individual trading as Stillman Products Company and as Stanley Laboratories, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph One: Respondent, Stanley Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal place of

business located in Portland, Oregon. Respondent Edward A. Bachman is an individual, trading as Stillman Products Company and as Stanley Laboratories, who also has his office and principal place of business in Portland, Oregon, in connection with and located at the same address as the corporate respondent above named. The respondent Edward A. Bachman is also president of the corporate respondent Stanley Laboratories, Inc., and controls and directs the business activities, sales policies and practices of the corporate respondent.

Paragraph Two: Respondents are now, and for more than one year last past have been, engaged in the business of selling and distributing certain drug products for feminine hygiene.

Respondents designate their said products so sold and distributed as "M. D. Medicated Douche Powder," "Contra-Jel," "Femeze," and "M. D. Supercones."

Respondents cause said products, when sold, to be transported from their place of business in Oregon to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

Paragraph Three: In the course and conduct of their aforesaid business, the respondents have



disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said products, by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in newspapers, and by circulars, leaflets, folders, pamphlets and other advertising literature, are the following:

1. As To M. D. Medicated Douche Powder:

“A Valuable Prescription For Discriminating Women . . . produced for discriminating modern women who desire a sanitary, and dependable douche to insure their personal hygiene. It is but recently that scientific research has developed new and improved methods to safeguard the health and happiness of married women. Endorsed by physicians and surgeons.

M. D. Medicated Douche Powder not only cleans the vagina, and soothes the delicate membrane tissue, but it has the added advantage of the protective action of oxyquinolin sulphate, a dependable safeguard. Because of its many other beneficial uses, 'M. D.' is also a very valuable household remedy . . . for cuts, sores and burns."

"M. D. Medicated Douche Powder, endorsed by leading physicians and surgeons, is a germicide—soothing and cooling to delicate membranes with the addition of oxyquinolin sulphate—a reliable safeguard."

"Medical science now answers the problems of millions of women with a truly effective, reliable antiseptic powder."

"Effective in combatting any form of bacteria."

"It relieves women of fatigue and the annoying discharge, often occasioned by all day standing."

"Manufactured by Stanley Laboratories."

## 2. As To Contra-Jel:

"Contra-Jel is the highest quality vaginal antiseptic in jelly form. Its consistency insures even distribution and prolonged contact with every part of the vaginal tract, and its protective action endures as long as it remains within the vagina . . . "

"Contra-Jel is a harmless, non-irritating, vaginal antiseptic and prophylactic . . . It is

more convenient, sanitary and effective than are douches, tablets, capsules, or suppositories."

3. As to M. D. Supercones:

"They are stable and do not lose their antiseptic strength . . . a powerful yet non-irritating antiseptic . . . M. D. Supercones remain in effective antiseptic contact for many hours . . . They are actually soothing and beneficial as well as antiseptic."

4. As To Femeze:

"Femeze has been found to be a simple effective prescription affording relief for the functional pains and cramps which accompany menstruation . . . bringing relief in a short time by relaxing the contracted womb muscles, allowing them to react in a natural way. It does not merely deaden your nerves with drugs or narcotics to stop the pain. Femeze contains no narcotics."

Paragraph Four: Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondents represent directly and by implication:

1. That M. D. Medicated Douche Powder is a recent development of scientific research which is endorsed by leading physicians and surgeons; that said preparation is a competent and effective contraceptive; that said preparation is an antiseptic and germicide which will

combat any form of bacteria; that such preparation has competent remedial qualities for use on cuts, sores and burns, and that said preparation will relieve fatigue and annoying discharge connected with the menstrual period.

2. That Contra-Jel gives immunity from pregnancy, protection from venereal disease, and has germicidal and antiseptic properties.

3. That M. D. Supercones constitute an effective contraceptive which has powerful antiseptic properties.

4. That Femeze is an effective treatment for functional pains and cramps which accompany menstruation and that said preparation will relax the womb muscles, allowing them to react in a natural way.

Paragraph Five: In truth and in fact none of said products distributed by the respondents constitute competent or effective contraceptives and will not give immunity from pregnancy. None of said products constitute an adequate prophylactic and will not give protection from venereal diseases.

The product M. D. Medicated Douche Powder is not a recent development of scientific research and is not endorsed by leading physicians or surgeons. Under the conditions of use recommended by the respondents this product is not a germicide and is not a reliable antiseptic effective in combatting any form of bacteria. This preparation would have very little therapeutic value in the treatment of cuts, sores and burns generally. Such preparation has no

therapeutic value in relieving fatigue or discharge connected with the menstrual period.

Respondents' preparation Femeze is not an effective treatment for functional pains and cramps in excess of possible lessening of sensitivity to pain which might accompany menstruation. There is no scientific basis for the representation that this preparation will relieve menstrual pain by relaxing the womb muscles and allowing them to react in a natural way, and respondents' said preparation will not accomplish such results.

Respondents' preparations, Contra-Jel and M. D. Supercones do not have germicidal properties nor do they constitute powerful antiseptics as the antiseptic properties of these preparations are comparatively mild.

Paragraph Six: In addition to the statements and representations hereinabove set forth, the respondents make false, deceptive and misleading representations to the effect that their products are either prescribed or compounded by physicians or that they bear the endorsement or recommendation of the medical profession by means of the use of the letters "M. D." in designating their products M. D. Medicated Douche Powder and M. D. Supercones and by including therewith in advertising the likenesses of nurses and doctors with the figure of a cross in simulation of the Red Cross emblem.

In truth and in fact said products are not prescribed or compounded by a physician or physicians and they have not received the endorsement or recommendation of the medical profession.



Paragraph Seven: In addition to the above representations, the respondents, by the use of the term "laboratories" in their corporate and trade names, and in their advertising literature, also represent that they own, operate and control a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith. In truth and in fact the respondents neither own nor control any factory, plant or laboratory wherein their medicinal preparations are compounded or wherein any research activities are conducted, but instead the respondents are merely distributors of products compounded and manufactured by other concerns.

Paragraph Eight: The use by the respondents of the foregoing false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and causes a portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase respondents' said preparations.

Paragraph Nine: The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, The Premises Considered, the Federal Trade Commission on this 7th day of May, A. D. 1940, issues its complaint against said respondents.

### NOTICE

Notice is hereby given you, Stanley Laboratories, Inc., a corporation, and Edward A. Bachman, an individual trading as Stillman Products Company and as Stanley Laboratories, respondents herein, that the 14th day of June, A. D., 1940, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If the answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days

from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

\* \* \*

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint, and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegation of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon



application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 7th day of May, A. D., 1940.

By the Commission.

[Seal] OTIS B. JOHNSON,  
Secretary.

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[Title of Commission and Cause.]

### ANSWER

Now comes the respondents in the above entitled cause and for answer to the complaint, state as follows:

1. Respondents admit the material allegations of fact in Paragraph One of the complaint, except that respondents say that Stanley Laboratories, Inc. is being dissolved as a corporation, that Edward A. Bachman has long since discontinued trading as Stillman Products Company and as Stanley Laboratories.

2. Respondents admit the material allegations

of fact in Paragraph Two of the complaint except that respondents say that they have long since discontinued the sale in interstate commerce of all of the products set forth in Paragraph Two except that product known as "M. D. Medicated Douche Powder".

3. Respondents admit the material allegations of fact in Paragraph Three of the complaint except that they say that respondents have long since discontinued the practice set forth in Paragraph Three of the complaint; and respondents say further that on January 31, 1940, they filed in this cause a stipulation executed on their behalf by James J. Hayden, their attorney, which stipulation is incorporated herein by reference and made a part of this answer.

4. Respondents admit the material allegations of fact in Paragraph Four of the complaint, except that these respondents incorporate herein by reference the said stipulation of January 31, 1940.

5. Respondents admit the material allegations of fact in Paragraph Five of the complaint, except that they incorporate herein by reference the said stipulation of January 31, 1940.

6. Respondents emphatically deny each and every allegation of fact in Paragraph Six of the complaint. They state further that these respondents have not made and do not make, false, deceptive or misleading representation to the effect that their products are either prescribed or compounded by physicians, or that they bear the endorsements or recommendation of the medical profession by use

of the letters "M. D." in designating products known as M. D. Medicated Douche Powder, M. D. Supercones, and/or by including therewith in advertising the likenesses of nurses and doctors with the figure of a cross in simulation of the Red Cross emblem. These respondents further state that they have long since discontinued the sale in interstate commerce of the product known as M. D. Supercones, and they incorporate herein by reference the said stipulation of January 31, 1940. These respondents say further that the formula for the product known as M. D. Medicated Douche Powder was in fact prepared by a reputable physician and the use of said product has been approved by reputable doctors, and has actually been prescribed by reputable doctors to their patients. These respondents further say that the use of the letters "MD" are not intended to mislead purchasers of M. D. Medicated Douche Powder, and do not, in fact, mislead purchasers of said product to believe the same has received the endorsement or recommendation of the medical profession generally. These respondents say further that they have in good faith secured a registered trade-mark in the United States Patent Office for the use of the letters, "M D" as a symbol of the product known as M. D. Medicated Douche Powder; and that said trade-mark is known as number 366203, issued by the United States Patent Office to Stanley Laboratories, Inc., under the Act of February 20, 1905. They say further that the use of likenesses of doctors in connection with the sale of said products has long

since been discontinued and reference is hereby made again to said stipulation; and further, that the use of said likenesses of doctors was not intended to simulate and does not, in fact, simulate the Red Cross emblem. They say further that the use in advertising of likenesses of nurses is not intended to simulate, and does not, in fact, simulate the Red Cross emblem, and that as a matter of fact the use in advertising of the likenesses of nurses is merely intended and does in fact serve merely as a device to call attention of the reader to the product advertised.

7. Respondents admit the material allegations of fact in Paragraph Seven of the complaint, except that they incorporate herein by reference said stipulation of January 31, 1940, and they say further that they do, in fact compound the product known as M. D. Medicated Douche Powder.

8. These respondents admit the material allegations of fact in Paragraph Eight of the complaint, except that they incorporate herein said stipulation of January 31, 1940, and except that with respect to the product known as M. D. Medicated Douche Powder, the use of the letters "MD" has not had, and does not now have the capacity of tending to mislead or deceive a substantial portion of the purchasing public in any respect.

9. These respondents admit the material allegations of fact in Paragraph Nine of the complaint, except that they incorporate herein by reference said stipulation of January 31, 1940, and except

that they deny that the use of the letters "MD" in connection with the sale of M. D. Medicated Douche Powder have prejudiced or deceived the public or constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, these respondents pray that the said complaint against these respondents be dismissed.

STANLEY LABORATORIES,

INC. a corporation and

EDWARD A. BACHMAN,

trading as

STILLMAN PRODUCTS

COMPANY and as

STANLEY LABORATORIES

Per /s/ EDWARD A. BACHMAN

411 Northwest Broadway

Portland, Oregon.

/s/ JAMES J. HAYDEN

737 Woodward Bldg.

Attorney for Respondents.

Filed June 15, 1940.

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[Title of Commission and Cause.]

## STIPULATION AS TO CERTAIN FACTS

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 7, 1940, issued its complaint against respondents and caused such complaint to be served as re-

quired by law, in which it was charged that respondents were and had been using unfair and deceptive acts and practices in commerce in violation of the provisions of said Act.

Hearings having been held before William C. Reeves, an Examiner of the Commission, at Washington, D. C., on July 30, 1940, Detroit, Michigan, on October 3, 1940, Portland, Oregon, on June 16, 17 and 18, 1941, and Seattle, Washington, on June 30, 1941, at which testimony and other evidence were introduced in support of and in opposition to the allegations of the complaint, and it being the desire of counsel to explain and clarify the record with respect to certain testimony of the respondent, Edward A. Bachman, appearing at pages 141, 153 and 183 of the record, relative to the change of the name of the corporate respondent from Stanley Laboratories, Inc., to Stanley Drug Products, Inc., the manner in which said change was effected, and the time thereof;

It Is Hereby Stipulated And Agreed by and between R. P. Bellinger, trial attorney for the Federal Trade Commission, and the respondents that the following statement of facts may be made a part of the record herein, and that the Commission may consider the matter and things set forth therein to the same extent and the same effect as if witnesses had duly testified in this proceeding as hereinafter stated at a hearing duly and regularly held.



## STATEMENT OF FACTS

Paragraph One: The Federal Trade Commission has a competent witness available, to wit Lloyd R. Smith, Corporation Commissioner of the State of Oregon, who, if called, will testify that the corporate respondent herein, Stanley Laboratories, Inc. filed articles of incorporation with the Office of the Corporation Commissioner of the State of Oregon on August 9, 1937, and on May 16, 1941, filed supplementary articles, changing its name to Stanley Drug Products, Inc. The officers of the said corporation, Stanley Laboratories, Inc., as of May 16, 1941, and the officers who executed the supplementary articles changing said corporate name, as aforesaid, were E. A. Bachman, president; Emma-line Bachman, secretary; and William J. Ward, treasurer.

Dated this 10 day of October, A. D. 1941.

FEDERAL TRADE  
COMMISSION

By R. P. BELLINGER,

Trial Attorney.

STANLEY LABORATORIES,  
INC., and

EDWARD A. BACHMAN

By JAMES J. HAYDEN,

Counsel for Respondents.

Approved:

FEDERAL TRADE  
COMMISSION

By OTIS B. JOHNSON,

Secretary.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of March, A. D., 1942.

Commissioners:

William A. Ayres, Chairman,  
Garland S. Ferguson,  
Charles H. March,  
Ewin L. Davis,  
Robert E. Freer.

[Title of Cause.]

ORDER DENYING MOTION TO STRIKE  
TESTIMONY OF EDWARD A. BACH-  
MAN, DR. NORMAN A. DAVID, DR.  
ALBERT HOLMAN, DR. THOMAS R.  
MONTGOMERY, DR. FRANK CLANCEY,  
AND DR. R. PHILIP SMITH, AND AL-  
LOWING MOTION TO STRIKE TESTI-  
MONY OF F. R. STIPE.

This cause coming on to be heard upon the motion of James J. Hayden, attorney for the respondents, filed July 25, 1941, to strike out certain testimony, which motion was denied by the trial examiner and subsequently renewed in respondents' brief before the Commission; and

It Further Appearing To The Commission that with the exception of the witnesses Edward A. Bachman and F. R. Stipe, the motion is directed to the expert testimony of several physicians, and charges (1) that the form of interrogation of the expert witnesses was based upon reading quoted



excerpts of advertising from the complaint and (2) that the experts were not qualified to testify as to the meaning of words used in advertising, particularly the letters "M. D.", or the meaning which such letters conveyed to the general public; and

It Further Appearing To The Commission that a stipulation was entered into upon the record in this case whereby it was stipulated that the excerpts of advertisements set out and quoted in the complaint were disseminated by the respondents and that copies of advertisements containing said representations were received in evidence as exhibits by agreement of counsel; and

It Further Appearing that the motion in part is directed to the form of the questions asked and the method used in the examination of the witnesses, rather than to the qualifications of the witnesses to give the testimony and the competency of the testimony so given; and

It Further Appearing that the testimony of the expert witnesses was based upon examination of the formula of respondents' product in evidence and its effectiveness in use in the light of the representations in respondents' advertising; and

It Further Appearing that all of said experts were well qualified to express opinion as to the value or efficacy of respondents' preparations, based upon their general medical and pharmacological knowledge; and

It Further Appearing that all of said experts were qualified to testify as to the meaning conveyed

to them personally by the use of the letter "M. D." in respondents' advertising, and, by reason of their experience and contact with the general public, were qualified also to testify as to the meaning which such letters as used in respondents' advertising conveyed to the general public; and

The Commission having duly considered said motion and the record herein, and being now fully advised in the premises;

It Is Ordered that the motion of James J. Hayden, attorney for the respondents, to strike certain portions of the testimony of Edward A. Bachman, Dr. Norman A. David, Dr. Albert Holman, Dr. Thomas R. Montgomery, Dr. Frank Clancey, and Dr. R. Philip Smith be, and the same hereby is, denied; and the motion to strike the testimony of the witness F. R. Stipe be, and the same hereby is, allowed.

By the Commission.

OTIS B. JOHNSON,  
Secretary.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 1st day of April, A. D. 1942.

Commissioners:

William A. Ayres, Chairman,  
Garland S. Ferguson,  
Charles H. March,  
Ewin L. Davis,  
Robert E. Freer.

[Title of Cause.]

FINDINGS AS TO THE FACTS AND  
CONCLUSION

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 7, A. D., 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Stanley Laboratories, Inc., a corporation, and Edward A. Bachman, an individual trading as Stillman Products Company and as Stanley Laboratories, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act.

After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of said complaint were introduced by R. P. Bellinger and Carrel F. Rhodes, attorneys for the Commission, and in opposition to the allegations of the complaint by James J. Hayden and Leo Levinson, attorneys for the respond-

ents, before William C. Reeves, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

### FINDINGS AS TO THE FACT

Paragraph One: Respondent Stanley Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal place of business located in Portland, Oregon.

Respondent Edward A. Bachman is an individual trading as Stanley Laboratories, who also has his office and principal place of business in Portland, Oregon, in connection with, and located at the same address as, the corporate respondent. The respondent Edward A. Bachman is also president of the corporate respondent Stanley Laboratories, Inc., and controls and directs the business activities, sales policies and practices of the corporate respondent.

Paragraph Two: Respondents are now, and for more than one year last past have been, engaged in the business of selling and distributing certain drug products for feminine hygiene, including a product designated "M.D. Medicated Douche Powder." Respondents cause said products, when sold, to be transported from their place of business in the State of Oregon to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

Paragraph Three: In the course and conduct of their business, the respondents have disseminated and are now disseminating, and have caused and are now causing, the dissemination of false advertisements concerning their said products, by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and

deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in newspapers, and by circulars, leaflets, folders, pamphlets, and other advertising literature, are the following:

“A Valuable Prescription For Discriminating Women . . . produced for discriminating modern women who desire a sanitary and dependable douche to insure their personal hygiene. It is but recently that scientific research has developed new and improved methods to safeguard the health and happiness of married women. Endorsed by physicians and surgeons. M. D. Medicated Douche Powder not only cleans the vagina, and soothes the delicate membrane tissue, but it has the added advantage of the protective action of oxyquinolin sulphate, a dependable safeguard. Because of its many other beneficial uses, ‘M. D.’ is also a very valuable household remedy . . . for cuts, sores and burns.”

“M. D. Medicated Douche Powder, endorsed by leading physicians and surgeons, is a germicide—soothing and cooling to delicate membranes with the addition of oxyquinolin sulphate—a reliable safeguard.”

“Medical science now answers the problems of millions of women with a truly effective, reliable antiseptic powder.”

“Effective in combatting any form of bacteria.”



“It relieves women of fatigue and the annoying discharge, often occasioned by all day standing.”

“Manufactured by Stanley Laboratories.”

Paragraph Four: Through the use of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, the respondents represent, directly and by implication, that “M. D. Medicated Douche Powder” is a recent development of scientific research which is endorsed by leading physicians and surgeons; that said preparation is an antiseptic and germicide which will combat any form of bacteria; that such preparation has competent remedial qualities for use on cuts, sores, and burns; and that said preparation will relieve fatigue and annoying discharge sometimes connected therewith.

The use by the respondents of such descriptive words and phrases as “dependable,” “insure—personal hygiene,” “dependable safeguard,” “reliable safeguard,” and “effective, reliable antiseptic powder” in referring to, designating and describing said “M. D. Medicated Douche Powder,” has a tendency and capacity to cause purchasers and prospective purchasers to believe that said preparation is a preventative against conception and a prophylactic against disease.

Paragraph Five: Respondents’ preparation “M. D. Medicated Douche Powder” is composed of the following ingredients: alum, zinc, sulphate, boric acid powder, oxyquinolin sulphate, oil of white

thyme, oil of peppermint, phenol, and eucalyptol. This preparation is not a recent development of scientific research and is not endorsed by leading physicians or surgeons. The ingredient oxyquinolin sulphate is commonly used in douche powders and has a spermatocidal action in direct concentration. Under conditions of use, however, the proportion of oxyquinolin sulphate is so small as to have little or no therapeutic value. The ingredient phenol appearing in respondents' preparation is a germicide when used in sufficient concentration, but under the conditions of use in this preparation, this ingredient would have no germicidal properties and its effect would be solely that of an antiseptic. The use of oxyquinolin sulphate and phenol in sufficient concentration to act as a germicide, would have a tendency to irritate and damage the mucous membrane and other tissue with which it might come in contact.

A bacteriologist who testified on behalf of the respondents, made a test of respondents' preparation "M. D. Medicated Douche Powder" and found that dilutions of one teaspoonful to a pint, and one teaspoonful to a quart, had the ability to restrain the growth of test organism, indicating that the preparation had a bacteriostatic, or germ-inhibiting substance in it and indicating antiseptic properties. Under the conditions of use, the germ-inhibiting ingredients of respondents' preparation do not remain in direct or concentrated contact similar to that of a laboratory test and, consequently, the therapeutic value of this preparation is limited to that of a mild



antiseptic. This preparation has little or no therapeutic value in the treatment of cuts, sores, and burns. The use of this preparation in the form of a douche might temporarily clean out the vaginal tract but has no value in relieving fatigue and will not affect the cause of any discharge. Under conditions of use this preparation does not have either spermaticidal or germicidal properties and will not constitute a preventative against conception, in excess of the mechanical effect of flushing the vagina, and is not a prophylactic against disease.

Paragraph Six: In addition to the above representations, the respondents, by the use of the term "Laboratories" in their corporate and trade names, and in their advertising literature, also represent that they own, operate, and control a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith. In truth and in fact, the respondents neither own nor control any factory, plant, or laboratory wherein their medicinal preparations are compounded or wherein any research activities are conducted, but, instead, respondents are merely distributors of products compounded and manufactured by other concerns.

Paragraph Seven: In addition to the statements and representations hereinabove set forth, the respondents make false, deceptive and misleading representations to the effect that their products are either prescribed or compounded by physicians or that they bear the endorsement or recommendation

of the medical profession by means of the use of the letters "M. D." in designating their product "M. D. Medicated Douche Powder" and by including therewith in advertising, the likeness of nurses and doctors, with the figure of a cross in simulation of the American Red Cross emblem. In truth and in fact, said products are not prescribed or compounded by a physician or physicians and they have not received the endorsement or recommendation of the medical profession, and the use of the letters "M. D." either alone or in combination with the likeness of nurses and doctors and the figure of a cross, has a tendency and capacity to cause members of the purchasing public to believe that products so designated and described are endorsed and recommended by the medical profession. The use of a cross simulating the American Red Cross emblem in design, either alone or in combination with the letters "M. D." or with the picture of a nurse or doctor, has a tendency and capacity to cause members of the purchasing public to believe that the product is in some way endorsed or approved by the American Red Cross.

Paragraph Eight: The Commission further finds that there is not sufficient evidence in the record as to the dissemination of any particular advertisement with reference to respondents' preparations "Contra-Jel," "Supercones," and "Femeze" to warrant any finding involving these products.

Paragraph Nine: The use by the respondents of the foregoing false, deceptive and misleading state-

ments, representations and advertisements disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and causes a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparations.

### CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

By the Commission.

[Seal]                      W. A. AYRES,  
Chairman.

Dated this 1st day of April, A. D., 1942.

Attest:

OTIS B. JOHNSON,  
Secretary.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 1st day of April, A. D. 1942.

Commissioners:

William A. Ayres, Chairman,  
Garland S. Ferguson,  
Charles H. March,  
Ewin L. Davis,  
Robert E. Freer.

[Title of Cause.]

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence taken before William C. Reeves, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is Ordered that the respondents, Stanley Laboratories, Inc., a corporation, and its officers, and Edward A. Bachman, an individual trading as

Stanley Laboratories, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their preparation "M. D. Medicated Douche Powder," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

(1) Disseminating, or causing to be disseminated, any advertisement, by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference;

(a) That respondents' preparation is a recent development of scientific research, or that it is endorsed by physicians and surgeons;

(b) That respondents' preparation has **either** germicidal or spermatocidal properties under conditions of use;

(c) That respondents' preparation will combat any form of bacteria, or that it will have any effect upon any bacteria in excess of that of a mild antiseptic;

(d) That respondents' preparation has any substantial therapeutic value in the treatment of cuts, sores, or burns;

(e) That the use of respondents' preparation will relieve fatigue or have any effect upon the cause of vaginal discharge;

(f) That the use of respondents' preparation constitutes a preventative against conception, in excess of the mechanical effect of flushing the vagina;

(g) That respondents' preparation constitutes a prophylactic against disease:

(2) Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement in designating or describing respondents' preparation "M. D. Medicated Douche Powder" or any other preparation of substantially similar composition or possessing substantially similar properties, or the effectiveness of the use of such preparation, uses the words "dependable," "dependable safeguard," "reliable safeguard," "effective reliable antiseptic powder," or any other words of similar import or meaning, in such a manner as to infer or imply that such preparation is a contraceptive or prophylactic;

(3) Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which it likely to induce, directly or indirectly, the purchase in commerce or "commerce" is defined in the Federal Trade Commission Act, of respondents' preparation, which advertisement contains any of the representations prohibited in paragraphs (1) and (2) hereof and the respective subdivisions thereof;

(4) The use of the letters "M. D." in respond-



ents' trade name, or in any other manner, either alone or in conjunction with the picturization of a doctor, nurse, or cross, to designate or describe respondents' preparation or any other preparation which has not been endorsed or recommended by the medical profession;

(5) The use of the picturization of a cross or any other simulation of the American Red Cross emblem, either alone or in conjunction with the picturization of a doctor or a nurse, to designate or describe respondents' preparation;

(6) Use of the word "Laboratories" or any other word of similar import or meaning in respondents' corporate or trade name, or representing through any other means or device, or in any manner, that the respondents own, operate, or control a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith.

It Is Further Ordered that the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[Seal]

OTIS B. JOHNSON,  
Secretary.



[Title of Commission and Cause.]

### PROCEEDINGS

Trial Examiner Reeves: We will proceed in the matter of Stanley Laboratories, Inc., a corporation, and Edward A. Bachman, an individual, trading as Stillman Products Company and as Stanley Laboratories, Docket No. 4130, pursuant to order of the Federal Trade Commission, dated July 23, 1940.

The following appearances may be noted:

For the Commission, R. P. Bellinger; for the respondents, James J. Hayden.

The attention of respondents and their counsel is called to the fact that any person desiring a copy of the testimony taken or evidence received in this proceeding may obtain an order blank for that purpose from the official reporter, and the cost of the transcript is fixed by contract between the Commission and the Official Reporter. The Official Reporter is not an employee of the government.

Are there any statements or motions for the record?

Mr. Bellinger: May it please your Honor, we have a stipulation, somewhat in detail, which I would like to read into the record, and which the respondent will admit as facts.

Trial Examiner Reeves: You have an arrangement with counsel for the respondent as to putting this stipulation into the record?

Mr. Bellinger: Yes, sir.

Trial Examiner Reeves: You may proceed, Mr. [2\*] Bellinger.

Mr. Bellinger: The following stipulation of facts is admitted by the respondent.

1. Respondent Stanley Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Oregon, with its principal place of business located in Portland, Oregon. Respondent Edward A. Bachman is an individual, trading as Stanley Laboratories, who also has his office and principal place of business in Portland, Oregon, in connection with and located at the same address as the corporate respondent above named. The Respondent Edward A. Bachman is also president of the corporate respondent Stanley Laboratories, Inc., and controls and directs the business activities, sales policies and practices of the corporate respondent.

2. Respondents are now, and for more than one year last past, have been, engaged in the business of selling and distributing certain drug products for feminine hygiene.

Respondents designate their said products sold and distributed as "M.D. Medicated Douche Powder," "Contra-Jel," "Femeze," and "M.D. Supercones".

Respondents cause said products, when sold, to be transported from their place of business in Oregon to the purchasers thereof located in various other states of the United States and in the District

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\*Page numbering appearing at top of page of original Reporter's Transcript.

of Columbia, except that [3] the sale of Contra-Jel and Femeze was discontinued in interstate commerce on February 4, 1938, and the sale of M. D. Supercones in interstate commerce was discontinued in 1937.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various states of the United States and in the District of Columbia.

3. In the course and conduct of their aforesaid business, respondents disseminated prior to the 10th day of May, 1938, false advertisements concerning their said products, by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products; and respondents have also disseminated and have caused prior to the 10th day of May, 1938, the dissemination of false advertisements concerning their said products, by various means, for the purpose of inducing, and which are likely to induce directly or indirectly, the purchase of their said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in newspapers, and by [4] circulars, leaflets, folders, pamphlets and other adver-

tising literature, are the following which contain said false, misleading and deceptive statements and representations:

1. As to M. D. Medicated Douche Powder:

“A valuable Prescription for Discriminating Women . . . produced for discriminating modern women who desire a sanitary and dependable douche to insure their personal hygiene. It is but recently that scientific research has developed new and improved methods to safeguard the health and happiness of married women. Endorsed by physicians and surgeons. M. D. Medicated Douche Powder not only cleanses the vagina, and soothes the delicate membrane tissue, but it has the added advantage of the protective action of oxyquinolin sulphate, a dependable safeguard. Because of its many other beneficial uses, ‘M. D.’ is also a very valuable household remedy . . . for cuts, sores and burns.”

“M.D. Medical Douche Powder, endorsed by leading physicians and surgeons, is a germicide—soothing and cooling to delicate membranes with the addition of oxyquinolin sulphate—a reliable safeguard.”

“Medical science now answers the problems of millions of women with a truly effective, reliable and antiseptic powder.

“Effective in combating any form of bacteria.”

“It relieves women of fatigue and the annoying [5] discharge, often occasioned by all-day standing.”

“Manufactured by Stanley Laboratories.”

2. As to Contra-Jel:

“Contra-Jel is the highest quality vaginal anti-septic in jelly form. Its consistency insures even dis-

tribution and prolonged contact with every part of the vaginal tract, and its protective action endures as long as it remains within the vagina . . .”

“Contra-Jel is a harmless, non-irritating vaginal antiseptic and prophylactic . . . it is more convenient, sanitary and effective than are douches, tablets, capsules or suppositories.”

3. As to M.D. Supercones:

“They are stable and do not lose their antiseptic strength . . . a powerful yet non-irritating antiseptic . . . M.D. Supercones remain in effective antiseptic contact for many hours . . . They are actually soothing and beneficial as well as antiseptic.”

4. As to Femeze:

“Femeze has been found to be a simple effective prescription, affording relief for the functional pains and cramps accompanying menstruation . . . bringing relief in a short time by relaxing the contracted womb muscles, allowing them to react in a natural way. It does not merely deaden your nerves with drugs or narcotics to stop the pain. Femeze [6] contains no narcotics.”

Paragraph 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondents represent directly and by implication:

1. That M.D. Medicated Douche Powder is a recent development of medical research which is endorsed by leading physicians and surgeons; that said preparation is a competent and effective con-



traceptive; that said preparation is an antiseptic and germicide which will combat any form of bacteria; that such preparation has competent remedial qualities for use on cuts, sores and burns, and that said preparation will relieve fatigue and annoying discharge connected with the menstrual period.

2. That Contra-Jel gives immunity from pregnancy, protection from venereal disease, and has germicidal and antiseptic properties.

3. That M.D. Supercones constitute an effective contraceptive which has powerful antiseptic properties.

4. That Femeze is an effective treatment for functional pains and cramps which accompany menstruation and that said preparation will relax the womb muscles, allowing them to react in a natural way.

Paragraph 5: In truth and in fact, the product M.D. Medicated Douche Powder is not a recent development of [7] scientific research and is not endorsed by leading physicians or surgeons. This preparation would have very little therapeutic value in the treatment of cuts, sores and burns generally. Such preparation has no therapeutic value in relieving fatigue or discharge connected with the menstrual period.

Respondents' preparation Femeze is not an effective treatment for functional pains and cramps in excess of possible lessening of sensitivity to pain which might accompany menstruation. There is no scientific basis for the representation that this preparation will relieve menstrual pain by relaxing the womb muscles and allowing them to react in a natural

way, and respondents' preparation will not accomplish such results.

Paragraph 6: In addition to the above representations, the respondents, by the use of the term "laboratories" in their corporate and trade names, and in their advertising literature, also represent that they own, operate and control a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith. In truth and in fact the respondents neither own nor control any factory, plant or laboratory wherein their medicinal preparations are compounded or wherein any research activities are conducted, but instead the respondents are merely distributors of products compounded and manufactured by other concerns.

Paragraph 7: The use by the respondents of the [8] foregoing false, deceptive and misleading statements, representations and advertisements as set forth in paragraph 3 of the complaint and disseminated as aforesaid has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and has caused a portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase respondents' said preparations.

Mr. Bellinger: I have some exhibits here, which, with permission of counsel for the respondents, I will now introduce.



I offer in evidence, marked Commission's Exhibit No. 1, a box designated as "M.D. Supercones".

Trial Examiner Reeves: Are there any contents?

Mr. Bellinger: Yes.

Trial Examiner Reeves: You did not mention the contents in your offer.

Mr. Bellinger: Well, it is a box designated as "M.D. Supercones," containing apparently 12 of the cones.

Trial Examiner Reeves: Is there any objection? [9]

Mr. Hayden: No objection.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 1.

Mr. Bellinger: I now offer in evidence, marked Commission's Exhibit No. 2, a small package, designated as "Femeze".

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 2.

Mr. Bellinger: I offer in evidence, marked as Commission's Exhibit No. 3, a tin plate, apparently, designated thereon "M.D. Medicated Douche Powder," which apparently is the usual container of that product. It is merely straightened out instead of in the form in which it is when it contains the product.

Trial Examiner Reeves: Is there any objection?

Mr. Hayden: There is no objection.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 3.

Mr. Bellinger: I offer in evidence, marked [10] Commission's Exhibit No. 4, a glass tube, about five inches in length, which comes with the package of

Contra-Jel, and is intended for use in the application of that product.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 4.

Mr. Bellinger: I offer in evidence, marked Commission's Exhibit No. 5, a tube of this product known as Contra-Jel.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 5

Mr. Bellinger: I offer in evidence, marked Commission's Exhibit No. 6, a small paper package, containing a powdered preparation, which is designated thereon as "M.D. Medicated Douche Powder".

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 6.

Mr. Bellinger: I offer in evidence, marked Commission's Exhibit No. 7, pasteboard carton, with the designation thereon "Contra-Jel". [11]

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 7.

Mr. Bellinger: I offer in evidence, marked Commission's Exhibit No. 8-A and B, a leaflet, which is entitled "A Valuable Prescription For Discriminating Women".

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 8-A and B.

Mr. Bellinger: I offer in evidence, marked Commission's Exhibit No. 9, leaflet entitled "Femeze Tablets".

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 9.

Mr. Bellinger: I offer in evidence, marked Com-

mission's Exhibit No. 10, a circular headed "For The Physician's Information".

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 10.

Mr. Bellinger: I offer in evidence, marked [12] Commission's Exhibit No. 11, a can containing a powder preparation designated on the outside as "M.D. Medicated Douche Powder".

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 11.

Mr. Bellinger: I now move that the papers marked Commission's Exhibits 12, 13 and 14 for identification be accepted in evidence.

#### EXCERPT FROM COMMISSION'S EXHIBIT NO. 12

"Medical science now answers the problems of millions of women with a truly effective, reliable anti-septic powder."

#### EXCERPT FROM COMMISSION'S EXHIBITS NOS. 12, 13

"M. D. Medicated Douche Powder, endorsed by leading physicians and surgeons, is a germicide—soothing and cooling to delicate membranes with the addition of oxyquinolin sulphate—a reliable safeguard."

Trial Examiner Reeves: These papers will be received in evidence as Commission's Exhibits 12, 13 and 14.

Mr. Bellinger: I offer this document, marked as Commission's Exhibit No. 15, in evidence.

Mr. Hayden: No objection:

EXCERPT FROM COMMISSION'S EXHIBIT  
NO. 15

"It relieves women of fatigue and the annoying discharge, often occasioned by all day standing."

Trial Examiner Reeves: The document is received in evidence as Commission's Exhibit No. 15. [13]

Mr. Bellinger: I offer in evidence, may it please the Examiner, a power of attorney from the respondent to his counsel, Mr. Hayden, dated January 3, 1940.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 16.

Mr. Bellinger: I offer in evidence, letter dated January 31, 1940, from respondents' counsel, James J. Hayden, Esq., to the Commission, consisting of three typewritten pages attached to each other, marked respectively Commission's Exhibit 17-A, B and C.

Trial Examiner Reeves: These are received in evidence as Commission's Exhibit 17-A, B and C.

[14]

Mr. Bellinger: I will now offer in evidence, Commission's Exhibit No. 18, which is the formula for M. D. Medicated Douche Powder, in the amount of 403 pounds.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 18.

Mr. Hayden: All right; on information fur-

nished by M. E. Bachman, M. D., the Commission is informed that the formula for M. D. Medicated Douche Powder is as follows:

Alum .....	15 drams
Zinc Sulphate .....	6 drams
Boracic Acid Powder.....	12 ounces
Oxyquinolin Sulphate.....	1 dram
Oil of White Thyme .....	5 drops
Oil of Peppermint .....	1½ dram
Phenol .....	2 drams
Eucalyptol .....	3 drops

[15]

Making a total of 16 ounces.

Mr. Bellinger: I now propose this for the record as the formula for M.D. Supercone:

Boracic Acid .....	5 grains
Oxyquinolin Sulphate .....	1 grain
Salicylic Acid .....	grain
Mercuric Iodide Red .....	1/200 grain
Coco Butter QS—	

You agree that that is the formula?

Mr. Hayden: That that is the information furnished. I am satisfied it is; I do not know, but I am willing to stipulate that it is.

Mr. Bellinger: Well, it is agreed by counsel for the Commission and counsel for the respondent that the formula just read is the formula for M.D. Supercones.

I now offer in evidence a letter dated June 22, 1938, from Stanley Laboratories, Inc., to the Commission, marked Commission's Exhibit No. 19.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 19.

Mr. Bellinger: I offer in evidence a letter dated June 21, 1940, from James J. Hayden, Esq., attorney for the respondents, to the Commission, marked Commission's Exhibit [16] No. 20.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 20.

LAW OFFICE  
JAMES J. HAYDEN  
WOODWARD BUILDING  
WASHINGTON, D. C.

*Commis. G. 20*

FEDERAL TRADE COMMISSION  
DOCKET No. 4130 COMMISSION'S EXHIBIT No. 20  
IN THE MATTER OF Stanley Lab.  
DATE 7/30/40 WITNESS \_\_\_\_\_  
BY Gallagher OFFICIAL REPORTER

June 21, 1940.

Federal Trade Commission  
Washington, D.C.



In re: Federal Trade Commission  
vs. E. A. Bachman, et al  
Docket Number 4130

Gentlemen:

For the purpose of simplifying the record in the above cause, I suggest that a stipulation of the following matters be incorporated into a hearing and made a part of the final record in this case, as follows:

- (1) Respondents admit the material allegations of fact in Paragraph One of the complaint.
- (2) Respondents admit the material allegations of fact in Paragraph Two of the complaint.
- (3) Respondents admit the material allegations of fact in Paragraph Three of the complaint.
- (4) Respondents admit the material allegations of fact in Paragraph Four of the complaint.
- (5) Respondents admit the material allegations of fact in Paragraph Five of the complaint.
- (6) Respondents admit the material allegations of fact in Paragraph Seven of the complaint.

Very truly yours,

*James J. Hayden*  
James J. Hayden  
Attorney for Respondents  
in above cause.





Mr. Bellinger: I offer in evidence Commission's Exhibit 21, which is a copy of an invoice of Stanley Laboratories, Inc., Portland, Oregon, dated August 24, 1938. That will be marked Commission's Exhibit 21.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit 21.

Mr. Bellinger: We offer Commission's Exhibit No. 22, which is a copy of an invoice of Stanley Laboratories, Inc., Portland, Oregon, dated August 19, 1938.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 22.

Mr. Bellinger: I offer Commission's Exhibit No. 23, copy of an invoice from Stanley Laboratories, Inc., Portland, Oregon, dated October 28, 1938.

Trial Examiner Reeves: This is received in evidence as Exhibit No. 23. [17]

Mr. Bellinger: I offer as Commission's Exhibit No. 24 copy of an invoice of Stanley Laboratories, Inc., Portland, Oregon, dated September 3, 1938.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 24.

Mr. Bellinger: I offer in evidence a leaflet, entitled "A Valuable Prescription For Discriminating Women", which is marked Commission's Exhibit 25-A and B.

Trial Examiner Reeves: It is received in evidence as Commission's Exhibit 25-A and B.

Mr. Bellinger: I offer leaflet or folder, entitled "2 Valuable Prescriptions For Discriminating Women", as Commission's Exhibit 26-A and B.

Trial Examiner Reeves: It is received in evidence as Commission's Exhibit 26-A and B.

Mr. Bellinger: I offer a leaflet or circular, designated as "coupon", marked Commission's Exhibit 27-A and [18] B.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit 27-A and B.

Mr. Bellinger: I offer leaflet designated as "Valuable Coupon", marked Commission's Exhibit No. 28.

Trial Examiner Reeves: It is received as Commission's Exhibit No. 28.

Mr. Bellinger: I offer a leaflet designated as "Valuable Coupon", and relating to M.D. Supercones, marked Commission's Exhibit 29-A and B.

Trial Examiner Reeves: It is received in evidence as Commission's Exhibit 29-A and B.

Mr. Bellinger: I offer in evidence a leaflet entitled "Femeze", marked Commission's Exhibit 30-A and B.

Trial Examiner Reeves: It is received in evidence as Commission's Exhibit 30-A and B.

Mr. Bellinger: I offer a folder or leaflet [19] designated "M.D. Medicated Douche Powder", marked Commission's Exhibit 31-A and B.

Trial Examiner Reeves: It is received in evidence as Commission's Exhibit 31-A and B.

Mr. Bellinger: I will say, then, that I offer in evidence the ad in the extreme lower left corner of page 17 of the Oregon Daily Journal, of Portland, Oregon, of Wednesday, April 20, 1938.

Trial Examiner Reeves: This is received as Commission's Exhibit No. 32.

Mr. Bellinger: I offer in evidence the ad in the extreme lower left corner of the Daily Olympian, of Olympia, Washington, of Wednesday, March 23, 1938, as Commission's Exhibit No. 33. [20]

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 33.

Mr. Bellinger: I offer the ad of M.D. Medicated Douche Powder in the seventh column on page 3 of the Daily Olympian, Olympia, Washington, newspaper, dated March 23, 1938, marked Commission's Exhibit No. 34.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 34.

Mr. Bellinger: I offer in evidence the ad of M.D. For Feminine Hygiene, column 5, page 4 of the Register Guard, Eugene, Oregon, newspaper, dated March 23, 1938, marked Commission's Exhibit No. 35.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 35.

Mr. Bellinger: I offer the ad located in the lower left corner of page 6 of the Seattle Post-Intelligencer, Seattle, Washington, of Wednesday, May 6, 1936, marked Commission's Exhibit No. 36.

Trial Examiner Reeves: This is received in evidence [21] as Commission's Exhibit No. 36.

Mr. Bellinger: I offer in evidence leaflet or folder entitled "A Valuable Prescription For Discriminating Women", marked Commission's Exhibit No. 37-A and B.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit No. 37-A and B.

Mr. Bellinger: I offer a leaflet or folder of Stanley Laboratories, marked Commission's Exhibit 38-A and B.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit 38-A and B.

Mr. Bellinger: I offer leaflet or folder entitled "2 Valuable Prescriptions For Discriminating Women", marked Commission's Exhibit 39-A and B.

Trial Examiner Reeves: This is received in evidence as Commission's Exhibit 39-A and B. [22]

### EXCERPTS FROM EXHIBITS

Com. Exs. 8-A-B, 25-A-B, 26-A-B, 37-A-B, 39-A-B "A Valuable Prescription for Discriminating Women . . . produced for discriminating modern women who desire a sanitary and dependable douche to insure their personal hygiene. It is but recently that scientific research has developed new and improved methods to safeguard the health and happiness of married women. Endorsed by physicians and surgeons. M. D. Medicated Douche Powder not only cleans the vagina, and soothes the delicate membrane tissue, but it has the added advantage of the protective action of oxyquinolin sulphate, a dependable safeguard.

Because of its many other beneficial uses, 'M. D.' is also a very valuable household remedy . . . for cuts, sores and burns."

Mr. Bellinger: I will ask Mr. Marcellino to take the stand.

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CHARLES MARCELLINO

was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Bellinger:

Q. Your name is what?

A. Charles Marcellino.

Q. Your address is what, Mr. Marcellino?

A. 3653-34th Street, Northeast. That is in Mt. Ranier, Maryland.

Q. You are in business here, are you, Mr. Marcellino?

A. Yes.

Q. What is your business address, or is it that which you have just given us?

A. That is it; yes.

Q. What business are you engaged in?

A. Shoe repairing.

Q. How long have you lived in Washington?

A. I am living in Mt. Ranier. I have been out there a year. Mt. Ranier is right over the line.

Q. Now, Mr. Marcellino, I am going to, with the permission of the Examiner and counsel for the respondent, show you an [24] advertising sheet, which has been introduced in evidence in this case, and I am going to ask you to look at it and tell us, please, what that advertising means to you, so far as the products represented on that sheet are concerned.

A. Well, from the——

(Testimony of Charles Marcellino.)

Mr. Hayden: Just a minute, please. I do not quite see the point of this question. I wish counsel would state the purpose of his asking this witness this particular question. He has shown no connection with the case so far.

Mr. Bellinger: I do not think it is necessary, may it please the Examiner, to show any connection with the case. The witness has no connection with the case. He is merely a man who was asked to come in here from the public. We have alleged that this advertising is misleading, and now I want to show by him what that form of advertising represents to him, what it means to his mind.

Trial Examiner Reeves: You may proceed. The objection will be overruled.

The Witness: Why, it is, from looking at that——

Mr. Hayden: I note an exception, may it please the Examiner.

Trial Examiner Reeves: Exception noted.

By Mr. Bellinger:

Q. You may go right ahead.

A. From looking at that advertisement there, I believe [25] that it is—all of this has been endorsed by the doctors.

Q. All those products? That means to you that those products have been endorsed by the medical profession?

A. By the medical profession. That is it.



(Testimony of Charles Marcellino.)

Mr. Hayden: I suggest counsel is leading the witness, if the Examiner please.

Q. Why do you say that, Mr. Marcellino?

By Mr. Bellinger:

A. Well, for the simple reason that it has the M. D. and a cross. You take a doctor's name—they all have an M. D. on it, and that would suggest that to me.

Mr. Bellinger: No further questions.

### Cross Examination

By Mr. Hayden:

Q. Mr. Marcellino, how did you happen to be called into this case?

A. Why, several years back one of these—I don't know just who it was, but someone came around to the shop and asked me about this, just asked me what I thought about it, and I just—he showed me a tissue paper—what I thought about it, and by looking at this “M. D.”, and that is about all.

Q. He showed you that piece of paper with the advertisement? A. That I don't know. [26]

Q. What did he show you?

A. I believe it was mostly tissue paper—M. D. tissue paper, I believe, or something.

Q. M. D. tissue paper? A. Yes.

Q. Do you mean toilet tissue paper?

A. That is it.

Q. Who was it that came to see you?

A. I really don't know—just one man came around.

(Testimony of Charles Marcellino.)

Q. Did he say who he was?

A. He probably gave me the name, but I can't remember it. He was only in there about five or ten minutes, and then went on out.

Q. And he asked you about that tissue paper?

A. No; what that advertisement, or whatever he had there, what that would mean in my mind.

Q. And what did you tell him?

A. I told him—I explained that—I explained that—I believe he asked me if that "M. D." would signify that was—well, I told him that "M. D." in my mind meant that it was passed by the doctors, and so forth and so on.

Q. And he asked you whether "M. D." would signify that to you?

A. Well, no, he didn't ask me that. He just asked me what I thought about it. [27]

Q. Did he point out the "M. D."?

A. That I couldn't say.

Q. How long ago was that?

A. A couple of years ago.

Q. He might have pointed out the "M. D." to you?

A. Because it was rather odd for someone to come around; it was the first time anybody ever came in the shop like that, and said anything. That is the way I remember it.

Q. Did he say he was from the Federal Trade Commission?

A. That I don't know. I didn't know whether he represented the company or——

(Testimony of Charles Marcellino.)

Q. Did he offer to sell you any M. D. Tissue?

A. Oh, no. He said he was going around getting different peoples' opinion on it.

Q. Well, did he tell you he was from the Federal Trade Commission?

A. I don't remember that, either.

Q. How did you happen to be called as a witness?

A. I just got this paper here this morning. I didn't know what it was all about, or anything, till just now.

Q. You didn't know you were John Q. Public?

A. No, I didn't.

Q. Did you ever see this paper before?

A. I am not sure whether I have or not. If I remember correct, I believe he did have a lot of paper of advertise- [28] ments of a different kinds.

Q. But the paper that he showed you a couple of years ago was not this paper?

A. I couldn't say for sure.

Q. How did you know it was a sample of tissue paper?

A. In a book form, I believe.

Q. In a book? A. Yes.

Q. Like ordinary toilet paper, was it?

A. No. I believe he did have a roll of paper, and then he had pictures of it.

Q. And it said "M. D. Tissue"?

A. Yes.

Mr. Hayden: That is all.

(Testimony of Charles Marcellino.)

Recross Examination

By Mr. Hayden:

Q. One other question, Mr. Marcellino: Did the letters "M. D.", as shown to you on that tissue paper have periods after the letters? [29]

A. I am not sure.

Q. You don't remember that? A. No.

Q. Do you know any person whose initials are "M. D."?

A. Offhand, I couldn't say.

Q. Every time you see the letters "M. D.", do they indicate a doctor to you? A. Yes.

Q. Why?

A. Why, everyone I ever seen has a sign out front, has that on it.

Mr. Hayden: Mr. Examiner, I move that the testimony of Mr. Marcellino be stricken from the record, on the ground that what he has testified about has reference to M. D. Toilet Tissue Paper, which is not a product of this respondent.

Trial Examiner Reeves: The motion will be denied.

Mr. Hayden: I note an exception.

Trial Examiner Reeves: Exception noted. [30]

GEORGE H. CANDEY

was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Bellinger:

Q. What is your full name, sir?

A. George H. Candey.

Q. What is your address, Mr. Candey?

A. 1118-18th Street, Northwest.

Q. Washington? A. Yes, sir.

Q. What business are you engaged in?

A. Hardware business.

Q. How long have you been so engaged?

A. I, myself, just three years.

Q. At that point—that place of location?

A. Yes, sir.

Q. Now, Mr. Candey, I am going to show you a specimen of advertising, which will be placed in evidence in this case, and I am going to ask you, please, to look at it and tell us, after reading it and viewing the pictures and the type, what impression that conveys to your mind as to the products [31] advertised?

A. Well, the first impression and the most outstanding one to my mind would be, if not necessarily put out by doctors, that it was certainly endorsed by doctors.

Q. Why, Mr. Candey?

A. Well, for one thing, the different pictures—the one here; it shows here “your doctor would tell you”, and that certainly would be taken for

(Testimony of George H. Candey.)

a doctor. Up here you have a picture of a nurse; you have the cross. Here is another picture of a nurse. Several of these small items mention endorsed or approved by a doctor or physician.

Q. So that you would get the belief that it was endorsed by the medical fraternity or profession?

A. I certainly would.

Q. Now, I am going to ask you, Mr. Candey, to look at the sheet of advertising, which has been introduced into the record as Commission's Exhibit No. 13, and I ask you what that means to your mind, as to the products involved?

A. Well, that they would have the same effect on it. I would still say they were approved by the doctors. Practically every one of them mentions a doctor in the advertisement, and naturally I would be led to think that a doctor endorsed it.

Q. Then, I will ask you as to the advertising sheet, which is marked Commission's Exhibit No. 14, would there be any [32] change in your mind as to that?

A. No. After reading through the advertisements, there would not be.

Q. I show you a package, marked Commission's Exhibit No. 11, Mr. Candey, and ask you what that would mean to your mind?

Trial Examiner Reeves: Do you mean the printed matter on the picture?

Mr. Bellinger: Yes; on the picture.

The Witness: Well, to my mind, it would be sup-



(Testimony of George H. Candey.)

posed to be a product either put out by a doctor or endorsed by a doctor and the nursing profession or medical profession, and, so, therefore, is supposedly a good product, endorsed by them.

Mr. Bellinger: That is all, Mr. Candey.

Cross Examination

By Mr. Hayden:

Q. When did you first see these exhibits?

A. As to the actual date I couldn't say.

Q. Well, approximately.

A. Approximately two years ago.

Mr. Bellinger: Let us get the record straight on that. You have him confused—not intentionally, but he has never seen these exhibits until today. The exhibits he has seen are the same ones that Mr. Marcellino saw. [33]

By Mr. Hayden:

Q. Have you ever been interviewed by a representative of the Federal Trade Commission, Mr. Candey?

A. Yes; I believe there was one. That is what I had reference to.

Q. When was that?

A. As I say, approximately two years ago.

Q. And what did he show you?

A. The only thing I can bring to my mind is the fact that he had a loose leaf—to my mind, it was a loose leaf notebook, a large size notebook, with different advertisements in it, and he wanted

(Testimony of George H. Candey.)

my opinion on certain ones of those, but at present——

Q. Did you know him?

A. No; I can't say that I knew him, and I couldn't definitely swear that I know what those advertisements were now.

Q. Was he a stranger when he came into your store?      A. Absolutely.

Q. What advertisement did he show you?

A. Well, as I say, I couldn't definitely say that. That is quite a while ago.

Q. Can you testify that they were not the same ones as you have seen here this morning, Commission's Exhibit 12, 13 and 14?

A. I can say I don't believe they are. I wouldn't—— [34]

Q. What questions did he ask you?

A. Well, merely something on the order of the questions this morning, what the advertisements bring to my mind; that is, whether I would—just what they would represent to me.

Q. Did he point out the letters "M D"?

A. I wouldn't like to say that; that is, under oath.

Q. Well, you are not sure?

A. No; I am not sure.

Q. He may or he may not?

A. He may have. I couldn't say. As I say, that has been around two years ago.

Q. Did he ask you whether or not those letters

(Testimony of George H. Candey.)

or the information on the advertising suggested doctors to you?

A. I couldn't say that, although I believe he did. I couldn't say that definitely. When he came in, it was unexpected, and I never expected to have to refer to it again, and so, otherwise I might have paid more attention to what he did say.

Q. Did he show you samples of toilet tissue paper, with the letters "M. D." on them?

A. I couldn't say as to that.

Q. Well, did he bring any boxes of powder in with him?      A. I don't believe so.

Q. Did he show you anything except papers in the notebook?

A. That is the only thing I can bring to my mind, is the [35] notebook of the advertisements.

Q. You can not remember whether that advertising was douche powder or toilet paper?

A. No; I can't remember as to that. I would be willing to say that it was regarding "M. D." products. As to which ones, I couldn't say.

Q. Have you ever bought medicated douche powder?      A. No, sir.

Q. Have you ever read the advertisements for medicated douche powder?

A. Very seldom, that I know of.

Q. Have you ever read these particular advertisements, Exhibits 11, 12, 13 and 14, prior to this morning?      A. I don't believe so.

Q. Now, did the papers that your visitor showed

(Testimony of George H. Candey.)

to you two years ago have periods after the letters "M D"?      A. I couldn't say.

Q. He told you he was from the Federal Trade Commission?      A. Yes, sir.

Q. Now, do the letters "M D" suggest anything to you outside of doctors?

A. No; that is the first thing that would come to my mind, because it is the most prominent usage of those two letters.

Q. Do you mean to say that every time you see the letters "M D", you think of nothing but doctors? [36]

A. Unless there would be something else to show entirely different from a doctor, that would be the first thing that would come to my mind.

Q. If you see the letters "M D" painted on a street, would that necessarily bring a doctor to your mind?

A. No, but if I saw it with a picture of a nurse or a cross, I think it would.

Q. If you saw the picture of a nurse or cross? What kind of a cross?

A. Well, the Red Cross, if you want to call it that, and a nurse. You find nurses usually have a cross on their cap.

Q. Does the association of a picture of a nurse with a cross bring the idea of a doctor to your mind?

A. It would be in this—the combination of the two.

Q. Well, if you saw the letters "M D", without

(Testimony of George H. Candey.)

the picture of a doctor or nurse or a cross, what would that suggest to you?

A. Well, if it was just two letters, I don't know that it would suggest anything particular. If it was after a name, there would be no question about what it would suggest.

Q. I did not ask you that. The letters standing by themselves would not necessarily suggest a doctor to you? A. No, sir.

Q. Is it not true that there are hundreds of people who have the initials "M. D."? [37]

A. I imagine there are.

Q. Don't you see the letters "M. D." in ordinary newspaper reading? A. No doubt.

Q. And the only time they suggest a doctor to you is when you associate them with a picture of a doctor or a nurse or a cross; is that right?

A. That would be my impression; yes.

Q. This Exhibit No. 12. Did you ever see that before this morning?

A. I don't believe so. I couldn't say definitely.

Q. You have not read everything in this advertisement even yet; have you? A. No, sir.

Q. Have you read any of it? A. Yes, sir.

Q. How much of it?

A. I have read one of the items under some of the pictures.

Q. You looked at the letters "M. D."?

A. Yes. [38]

## JOHN WILLIAM BURROUGHS

was called as a witness for the Commission and, having been first duly sworn, testified as follows:

## Direct Examination

By Mr. Bellinger:

Q. Mr. Burroughs, what is your full name?

A. John William Burroughs.

Q. What is your address?

A. 4852 Wisconsin Avenue, Northwest.

Q. Washington?

A. Yes; Washington, D. C.

Q. What is your business?

A. I am a service station attendant.

Q. In Washington? A. Yes, sir.

Q. How long have you been so engaged?

A. Six years at this place.

Q. Mr. Burroughs, I am going to show you an advertising [39] sheet, marked Commission's Exhibit No. 12, and ask you to please look at it and tell us, from looking at those specimens of advertising, what the reaction or meaning is to your mind as to the products therein advertised.

A. Well, to look at it, with the "M. D." and a cross and a picture of a nurse, I would say it was signed by doctors and medical association, and that it was a good powder, approved by them.

Q. Have you read any of the advertising there?

A. Yes; I read some of that.

Q. Does that change your mind about it to any extent? A. No.

Q. All right, sir. I will ask you, then, to please



(Testimony of John William Burroughs.)

look at the advertising sheet, marked Commission's Exhibit No. 13, and I will ask you if that has the same impression for you?

A. Yes; that is the same impression—all three of them.

Q. I will ask you, then, to look at Commission's Exhibit No. 14, and then tell us what you would be led to believe by that?

A. I believe the same thing. It is the same identical thing to me.

Q. All right. Will you please look at Commission's Exhibit No. 11, the can of powder, and tell us, if you saw that, what it would mean to you?

A. Well, I would think that it has been approved by [40] doctors.

Mr. Bellinger: That is all.

Trial Examiner Reeves: You may cross examine.

#### Cross Examination

By Mr. Hayden:

Q. Mr. Burroughs, are you married?

A. Yes, sir.

Q. Do you buy any medicated douche powder?

A. No, sir.

Q. Do you read medicated douche powder advertisements? A. No, sir.

Q. Did you ever see such an advertisement before? A. No, sir.

Q. How did you first happen to see this advertisement?

(Testimony of John William Burroughs.)

A. Just when he showed it to me. This here (indicating), you are referring to?

Q. These exhibits.

A. Just when he showed them to me.

Q. Were you ever visited by a representative of the Federal Trade Commission?

A. Yes; I was.

Q. When?

A. I imagine it has been two or two and a half years ago.

Q. What did he say to you?

A. Well, he didn't say much, because I was really busy [41] at the time, and he had a roll of toilet paper, which had a white cross on it, and he asked me what I thought that was, and I told him toilet paper. I didn't know exactly what he was talking about, and was busy at the time, and he says, "Well, what else do you get an impression of?" It had a cross and M. D. and all written all over it, and I told him—he asked me what I thought about it, and whether I thought that was good, that that sign was good for it, and I told him yes, just from my glancing at it, a doctor. That was all he said.

Q. So that he first pointed out the letters "M. D." and asked you if you had——

A. He just had a roll of toilet paper in his hand.

Q. Do you know who produced that roll of toilet tissue?      A. No.

Q. You did not see the name of the manufacturer?      A. No.

(Testimony of John William Burroughs.)

Q. When he asked you what it suggested to you?

A. No.

Q. He first showed you the roll of toilet paper, and when you looked at it, it never occurred to you that any doctor had any connection with it?

A. I didn't notice it when he first showed it to me, because I was awful busy. I didn't have the time. I think there was another fellow on duty, too, and we had a lot of cars coming up, and in a joking way, he asked me what it was, [42] and I told him toilet paper, and he said, "All right." That is all there was to it at first.

Q. In reference to this Exhibit No. 12, this large sheet, you have not seen that before this morning, have you?

A. No, sir; I have not.

Q. You have not read all these advertisements?

A. No.

Q. You testified, in looking at it, it looked to you as though it had been signed by doctors?

A. That is right.

Q. Do you see any doctor's signature on that paper?

A. No, but from the quality of the paper, with a picture of a nurse and a cap, and then a cross and "M. D.", would just bring that to my mind. Without thinking of anything, it would automatically just bring that to my mind.

Q. Do you think of a doctor every time you see a picture of a nurse?

A. Not every time, but when I see them all in combination, it would make you think of them.

(Testimony of John William Burroughs.)

Q. Do you think of a doctor every time you see the letters "M. D."?      A. Oh, no.

Q. Will you look at Exhibit No. 10, and look at the signatures on any one or more of those advertisements, and tell me whether you see any doctor's name? [43]      A. No, I do not.

Q. Now, will you read any one of them and tell me whether you see anything in the language of the advertisement to indicate that a doctor signed it?

Mr. Bellinger: As a matter of fact, Mr. Hayden, he did not testify that he thought a doctor signed any of them.

Mr. Hayden: Yes; he did.

Mr. Bellinger: No; he did not. This only refers to a single——

Mr. Hayden: No; on Exhibit No. 12, he said the reaction was that it had been signed by doctors or by the medical profession.

Mr. Bellinger: Go to the record.

Mr. Hayden: All right. Will you read back the answer to that first question about Exhibit No. 12?

(The Reporter read as follows:

("Q. Mr. Burroughs, I am going to show you an advertising sheet, marked Commission's Exhibit No. 12, and ask you to please look at it and tell us, from looking at those specimens of advertising, what the reaction or meaning is to your mind as to the products therein advertised.

(Testimony of John William Burroughs.)

(“A. Well, to look at it, with the ‘M. D.’ and a cross and a picture of a nurse, I would say it was signed by doctors and medical association, and that it [44] was a good powder, approved by them.”)

By Mr. Hayden:

Q. So you did say you thought it was signed by doctors?      A. That is right.

Q. Look at the advertisement for Medicated Douche Powder, and tell me whether you see any doctor’s name signed to that?

A. No, I do not.

Q. If you read the advertisement and did not see a doctor’s name signed to it, would you still think it was signed by a doctor?

A. No, no. Not if I read it, I wouldn’t think it was signed by a doctor, if it wasn’t signed.

Q. Would you still think, if you read it, it had been approved by the medical profession, if no doctor’s name was on it?      A. Yes; I would.

Q. Why?

A. Well, with the “M. D.” on it, the way it reads, I would say it was.

Q. For instance, this advertisement for medicated douche powder: The letters “M. D.” and “Medicated Douche Powder” follow that?

A. Yes.

Q. What is there to suggest that any medical association approved that product? [45]

(Testimony of John William Burroughs.)

A. Nothing any more than just seeing the picture of the nurse and the cross and the "M. D." That would still stand in my mind when I was reading it.

Q. Do you take it for granted every time you see the letters "M. D." that a doctor has some connection with it?      A. No, I do not.

Q. When you see those letters on a can, does that mean that some medical association had something to do with it?

A. It doesn't mean it, but, to my mind, if it has a cross and a picture of a nurse and "M. D." on it, it does.

Q. Why?

A. Because that is my idea of how I would look at it.

Q. When you read the advertisement, would that change your mind, if you saw it was signed by Stanley Laboratories?

A. It would change my mind as far as thinking about doctors signing it; yes.

Q. If you would read it, you would have no longer the idea that any medical association approved it?

A. Well, no, I would still say, if it had that "M. D." that a medical association had something to do with it.

Q. What do you mean by "had something to do with it"?

A. Well, had approved it, that it was a good product.



(Testimony of John William Burroughs.)

Q. Does that advertisement say that any medical association ever approved it?

A. No; it doesn't say that. [46]

Q. You just guessed that?

A. From my remembrance of the picture, and reading it, I would just say that; that is all.

Q. What is there to lead you to believe that any medical association had approved M. D. Medicated Douche Powder?

A. Just the picture of the nurse and the cross and the "M. D." on the can.

Q. Then, every time you see a picture of a nurse or cross, you come to the conclusion that the medical association must have said that was good?

A. If it had "M. D." on it; yes.

Q. What difference does it make whether the letters "MD" had periods after them or not?

A. Well, if they had a period, it could be for the state of Maryland.

Q. What I mean is, if there was a period after the "M" and a period after the "D", would it make any difference?

A. Well, I don't know. I never seen one that did.

Q. How do you abbreviate doctor—a doctor of medicine?      A. "MD".

Q. Do you add periods or not?      A. No.

Q. Then, is it your understanding that those two letters "MD" without periods, stand for doctor?

(Testimony of John William Burroughs.)

A. To see it that way it does; yes. [47]

Q. And you think that periods are not needed there? A. No.

Q. Calling your attention to Exhibit No. 14, and looking at those pictures, are those women nurses?

A. I couldn't tell you.

Q. Do they look like nurses?

A. They don't look like nurses to me; no.

Q. Is there anything about the picture of those women that indicates to you that a doctor had anything to do with the production of that product?

A. No; unless I saw the can at the time.

Q. What is there on the can to indicate that a doctor had something to do with it?

A. The same thing—the nurse, cross and “M. D.”.

Q. Can you see a nurse on that can?

A. I sure can.

Q. You have good eyesight, brother.

A. That is a picture of a woman with a white cap on. Whether that is a nurse, I believe she is.

Q. You are not sure whether that is a nurse or not?

A. It looks like a nurse to me.

Q. As you look at that picture, you see four women there dressed in ordinary clothes?

A. That is right.

Q. There is nothing about the picture to indicate that a [48] doctor had something to do with the advertisement which is there?

A. Not of the four women; no.

(Testimony of John William Burroughs.)

Q. When you read the advertisement about M. D. Medicated Douche Powder, is there any doctor's name signed to it? A. No.

Q. No medical association's name signed to it?

A. No; not as far as I know.

Q. Then, there is nothing about that advertisement to indicate that any doctor had approved it or any medical association had approved it, except as you say, these letters "M. D."; is that right?

A. "M. D.", the picture of the cross, and what I say is a nurse in there.

Q. Calling your attention to the other picture on Exhibit 14, you see a picture of a girl, don't you? A. That is right.

Q. Nothing there to indicate a doctor; is there?

A. No, sir.

Q. She is just in ordinary clothes?

A. Just the picture of a girl is nothing to indicate a doctor; no.

Q. The only thing in that advertisement that suggests a doctor to you is the position of the letters "M.D."; is that right? [49]

A. And the picture of the nurse and the cross.

#### Redirect Examination

By Mr. Bellinger:

Q. After reading those advertisements, do you find anything in the wording of them that changes your mind from your first impression that it was endorsed by the medical profession?

A. Well, it isn't endorsed; after I read them,

(Testimony of John William Burroughs.)

I see it isn't endorsed, but that doesn't change my mind as to them. Offhand, from the picture of the nurse and the cross and that "M. D.", it gives me the idea that it has been endorsed by a doctor. [50]

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FRANCIS J. O'DONNELL

was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Bellinger:

Q. Doctor, what is your full name, please?

A. Francis J. O'Donnell.

Q. What is your address?

A. Business address?

Q. Well, it does not make any difference.

A. 5502 Colorado Avenue.

Q. What business are you engaged in, Doctor?

A. Drug business.

Q. Are you proprietor of the drug store at that location?      A. Yes.

Q. How long have you been so engaged? [51]

A. Between 16 and 17 years. It will be 17 years on the 24th of January.

Q. And you have been at that same stand all the time?      A. Yes, sir.

Q. Now, Doctor, I am going to show you Commission's Exhibit No. 12, and ask you to tell us, after looking at it and reading it, what impression

(Testimony of Francis J. O'Donnell.)

that has upon your mind as to the product therein advertised? What does it mean to you?

Mr. Hayden: Mr. Examiner, I think I will have to move to strike the question, on the ground that it is leading, that it does not call for facts, and that it is asking for conclusions.

Mr. Bellinger: That is the only way I know to prove, your Honor, the custom and practice of advertising and what it conveys to the mind of the prospective buyer.

Trial Examiner Reeves: The objection will be overruled.

Mr. Hayden: An exception, please?

The Witness: It looks like to me it was put out by a doctor or endorsed by a doctor or by a medical society.

By Mr. Bellinger:

Q. Why, Doctor?

A. Well, the "M. D." and the nurse and the cross are there, and the picture of the doctor right here (indicating)—"Your Doctor Will Tell You"—there is no other impression [52] that it could leave on anyone's mind. That is as far as I am concerned, and the fact that the "M D" up here has no periods behind it, and down here (indicating), it has, in the small one; so that means doctor to me. It has got periods behind each "M. D." down in the small advertisement, but on the package here there are no periods between the "M" and "D" there.

(Testimony of Francis J. O'Donnell.)

Q. What impression does that convey to your mind?

A. Doctor—put out by a doctor or endorsed by a medical society, and it has in there the doctor, right here in that advertisement (indicating); it really looks as though the doctor is talking to the public and to the woman that uses the powder. That is the way I feel about it. That is the picture of an old type—an old family doctor, right there (indicating), talking right to the women who drink in this kind of advertisement or any kind of advertisement. Of course, a woman is the one who would look at it, because it is herself that uses it.

Q. What impression would be conveyed to your mind by looking at the representations on the tin container, marked Commission's Exhibit No. 11?

A. I still get the impression that it was either a doctor who put it out or it was endorsed by a medical society, or else the "M. D." wouldn't be on there.

Q. I see. [53]

A. It looks to me as though it was put out by the Medical Society or a medical doctor.

Q. Doctor, will you look at some of these advertisements, these advertisements here (indicating)?

A. Yes; I want to read this first one right here. This is the one that forms my whole opinion, right there (indicating), that picture of that kind and "Your Doctor Will Tell You".



(Testimony of Francis J. O'Donnell.)

Q. All right. Just read it to yourself.

A. I still say that it is put out by a doctor or endorsed by the medical profession.

Q. Now, will you read one or two more, please, if you do not mind? Pick them out there and read any particular ones, and see if it changes your mind after reading the wording.

A. "Endorsed By Leading Physicians and Surgeons." "Approved By Physicians and Surgeons". Everything is physicians and surgeons on there, the whole setup. That is the way it strikes me, and then that "M. D.", too. I can't form any other opinion.

Q. All right, sir.

A. The whole thing is put out by the medical—what is the "M. D." on there for? That is what I would like to know, other than to create that impression.

Q. I don't know.

A. I don't, either. In fact, I never saw it before, but I was just wondering there what the "M. D." was on there [54] for, if it was not for that reason, to create that impression.

Q. Take a look at the exhibit marked Commission's Exhibit No. 13, read it, and tell us what you think about those.

A. Here is your nurse again, right here (indicating). Here is your doctor right here, again (indicating).

Q. Any change in your belief?

(Testimony of Francis J. O'Donnell.)

A. I am a registered druggist.

Q. You are a registered druggist?

A. Yes.

Q. You have been in the business as a druggist for 33 years?

A. Not as a druggist. No; I have been——

Q. I mean in the drug business.

A. I worked in a drug store, and I have been a druggist since 1920.

Q. That is 20 years.

A. Yes, sir, since 1920.

Q. As a druggist, you receive a great deal of advertising material, of course?

A. Yes, sir.

Q. And you read that advertising and generally get acquainted with it?

A. Some time; yes. [57]

Q. Are you easily fooled as to what an advertisement contains?

A. No, sir. I am ashamed of some of the advertisement that comes to my place. That is off the record. I didn't mean that——

Q. You are not misled by such advertising, are you?

A. No.

Q. Now, do you handle the "M. D." products?

A. I have never seen them before in my life. I don't think it is sold in this part of the country.

Q. You know a good many doctors around the city?

A. Quite a few; yes.

(Testimony of Francis J. O'Donnell.)

Q. You know there is a medical association here—a medical society? A. Yes.

Q. Do you know whether or not the medical society has placed its endorsement on any medicinal product?

A. I know they have not, but does the public know?

Q. You know that the medical society never endorses a product?

A. Yes. But does the public know that?

Q. Please don't ask me questions. I am asking them. A. All right.

Q. Now, with your knowledge that the Medical Society of the District of Columbia and elsewhere never endorses a [58] medical product or any other product, you look at those advertisements for the "M. D." products and you say that they indicate that the medical profession has endorsed them?

A. Yes.

Q. Why?

A. From the looks of the package, the looks of the advertising.

Q. But you told us, Doctor, that you know that the medical profession never endorse a product?

A. Yes; I know that.

Q. And yet you say——

A. But it is misleading, because it leads the public to believe it.

Q. I am talking about the fact that you are not misled. Are you? A. No, I am not.

(Testimony of Francis J. O'Donnell.)

Q. You can read these advertisements, and you know the minute you lay eyes on them——

A. Yes.

Q. ——that the Medical Society has never endorsed a product?      A. Yes.

Q. You know that the medical profession as a whole has never endorsed products?

A. Yes. [59]

Q. You know that no reputable doctor signs his name and says, "That is a product which I endorse"?      A. Yes.

Q. You know that?      A. Yes.

Q. Then, you personally are not misled?

A. No, sir.

Q. You personally have been talking about what other people might do.

A. From the looks of that package right there——

Q. Just a minute, Doctor. My question is——

A. Yes.

Q. You are testifying not on behalf of yourself because you are not misled?      A. Yes.

Q. You are telling the Commission that, in your opinion, other people are misled?

A. I am testifying——

Q. Let me finish my questions, please. You are testifying that you are not misled personally?

A. Yes.

Q. But that, in your opinion, other people are misled by the advertising of these products?

A. Yes.

(Testimony of Francis J. O'Donnell.)

Q. Is that right [60]

A. That is right. I am testifying from my experience in the drug business, the length of time I have been in that. The women tell me when they come in to buy these things, "It must be good; it is endorsed by doctors".

Q. But did you not say that you are not personally misled? A. No, I am not.

Q. You are telling the Commission that, in your opinion, other people might be misled, but that you are not; is that correct? A. That is right.

Q. All right. A. Yes.

Q. Then, when you personally look at this advertisement, you see the letters "M. D." and see the picture of a nurse and see the picture of a doctor, and you know perfectly well that it is not a member of the medical profession that has endorsed it; don't you?

A. I know perfectly well there should be an investigation of this advertisement——

Q. Please answer the question.

A. The way I feel about it.

Q. You know perfectly well, when you look at the letters "M. D.", and the picture of the nurse, that no medical association or doctor has ever endorsed that; don't you? A. Yes. [61]

Q. In your business as a druggist, do you handle douche powders? A. Yes, indeed.

Q. Do you handle Supercones?

A. No, sir.

Q. Do you know what Supercones are?

(Testimony of Francis J. O'Donnell.)

A. That is a trade name on it.

Q. Do you know what they are, actually?

A. It is a contraceptive. It is a suppository; isn't it?

Q. Do you know how it operates, how it works?

A. No; I never read it.

Q. You have never seen them?

A. I have never seen them before; never seen this package before. I came down here.

Q. I understood you to say that many men came into your store, on instructions from their wives, to buy contraceptives of one kind or another; is that right?

A. We were talking about powder then, weren't we?

Q. Well, make it powder. A. No—yes, sir.

Q. One final question: As you look at the advertising on this Exhibit No. 12, the large one, and on 13 and 14, those pages you have before you—when you look at those exhibits and read the material, you know that has not been endorsed by the medical profession? [62]

A. Which pages are they?

Q. This large exhibit.

A. This one here (indicating)?

Q. When you read those advertisements in Exhibit No. 12, you know perfectly well that the medical profession never endorsed any one of those; don't you? A. I do; yes, sir.



(Testimony of Francis J. O'Donnell.)

Redirect Examination

By Mr. Bellinger:

Q. Doctor, you know from your experience, don't you, and your contacts with your customers, what remarks they make about such advertising?

A. Yes; I hear them every day.

Q. And you have testified from those facts, have you not?

A. Yes. That is how I make that remark.

Mr. Bellinger: That is all.

The Witness: That it was from my experience, more than from my feeling towards the advertisement. [63]

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ROBERT ERNEST TAYLOR

was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Bellinger: [64]

Q. Mr. Taylor, what is your full name?

A. Robert Ernest Taylor.

Q. And what is your address?

A. 1718-17th Street, Northwest.—

Q. Washington? A. Washington; yes.

Q. What is your business; what work are you engaged in? A. Driver-salesman.

Q. For the Coca-Cola Company, I judge?

A. Yes.

Q. How long have you been so engaged?

(Testimony of Robert Ernest Taylor.)

A. About three years and a half.

Q. Where were you prior to that?

A. Raleigh, North Carolina.

Q. Mr. Taylor, I am going to show you Commission's Exhibit No. 12. I will ask you to look at it and read it, and then, if you will, tell us what impression that advertisement conveys to your mind with respect to the products advertised.

A. If you mean the product, the advertisement conveys to me is a product that is approved by the leading profession—medical profession, just to look at the advertisement and the trade mark here.

Q. Have you read some of it?

A. Yes; I have read some of it.

Q. And is there anything, after reading it, that changes [65] your mind about that?

A. Yes; there is—the advertisement, I don't think it is a product that should be advertised.

Q. No, I don't mean that. I mean, after reading the advertisement, do you think the same way about it. Do you say that when you look at it you get the impression that it is endorsed by the medical profession or fraternity. Well, after reading it do you get any different impression, or do you still think the same way about it?

A. You mean, in my mind, do I think——

Q. Yes.

A. No. After reading the advertisement, just glancing at it, you would think it would be endorsed by the medical profession, but after reading it, I

(Testimony of Robert Ernest Taylor.)

don't think it would be endorsed by the medical profession.

Q. You mean to say that after you read the full advertisement you changed your mind about it, or that there was something in there to change your impression that you first got, or would you still think that it was endorsed by the medical profession?

Mr. Hayden: He has answered that, I submit Mr. Examiner. He says that after reading it he changed his mind, he did not think it was approved.

Mr. Bellinger: No; I think he is somewhat confused, Mr. Hayden. He seems to be a little confused. I [66] evidently do not make myself quite clear to him, for some reason.

By Mr. Bellinger:

Q. Mr. Taylor, what is there on there that makes you think it was endorsed—the products were endorsed by the medical profession?

A. Well, the cross and the "M. D." and the nurse; that is all.

Q. All right. After you have read that, is there anything in the printing that changes that impression?

Mr. Hayden: Just a minute, please. I submit that the question is improper, because it leads to an answer. He says: Is there anything in it that leads to a different conclusion? That is not a direct question. It is a leading question.

Trial Examiner Reeves: The question is leading.

(Testimony of Robert Ernest Taylor.)

Mr. Hayden: And I submit he has answered the original question.

By Mr. Bellinger:

Q. Does reading the ad change your impression?

A. Not as far as—if you read the ad you would still think it was approved by the medical profession.

Mr. Bellinger: That is all. I have no further questions.

Mr. Hayden: Mr. Reporter, will you go back to the [67] question that Mr. Bellinger asked, about the second or third, where he asked the first time, “After reading it, does it change your mind?” and the answer was that he did change his mind? Would you mind reading that question and answer back?

(The reporter thereupon read as follows:

“Q. No, I don’t mean that. I mean, after reading the advertisement, do you think the same way about it? Do you say that when you look at it you get the impression that it is endorsed by the medical profession or fraternity? Well, after reading it do you get any different impression, or do you still think the same way about it?

“A. You mean, in my mind, do I think——

“Q. Yes.

“A. No. After reading the advertisement, just glancing at it, you would think it would be endorsed by the medical profession, but after reading it, I don’t think it would be endorsed by the medical profession.”)

(Testimony of Robert Ernest Taylor.)

Mr. Bellinger: It shows clearly that he was confused by my question.

**Cross Examination**

By Mr. Hayden:

Q. Are you married, Mr. Taylor?

A. No, sir.

Q. What is your age? [68]                      A. 29.

Q. Do you know what these products are that you see in that advertisement?

A. Well, from what I read, they are some kind of—that is a douche powder.

Q. Do you know what a douche powder is?

A. No, I do not. I have an idea what it is.

Q. Well, what is it?

A. It is a powder women use sometimes in having intercourse with men. That is my impression of it.

Q. Do you know what they use it for?

A. To keep from having children, I suppose.

Q. Did you ever see that advertisement before this morning?                      A. No; I can't say I have.

Q. Have you been visited by a member of the Federal Trade Commission staff in the last couple of years?                      A. No, sir.

Q. When did you first know that you were going to be called as a witness this morning?

A. Just 10 minutes before 12 o'clock.

Q. And you never talked with any representative of the Commission before?                      A. No.

Q. When you talked to Mr. Bellinger, this gentleman on my right, this morning, did he call

(Testimony of Robert Ernest Taylor.)

your attention to those [69] letters "M. D." in the advertising?      A. No, sir.

Q. What did he say to you about that advertising?

A. He asked me what I would get—what impression I would get by reading this advertisement.

Q. And what did you say?

A. I told him just what I told you a while ago.

Q. Which was——

A. By looking at the advertisement, the pictures on it, you would think it was approved by the medical profession.

Q. Now, why did you think it was approved by the medical profession because of these pictures?

A. Well, it has doctors and nurses.

Q. Did you ever see doctors and nurses on anything else?

A. Oh, yes; on a lot of drugs and different things.

Q. And does that mean that every one of those has been approved by the medical profession?

A. Well, I never gave it much thought.

Q. Did you ever read any ads for douche powder before?      A. No, sir, I have not.

Q. How far did you go in school?

A. I got through first year high school.

Q. And do you think of a doctor every time you see the letters "M. D." anywhere?

A. Well, most of the time; yes, sir. [70]

Q. Can you see the letters "M. D." and think of anything else besides a doctor?



(Testimony of Robert Ernest Taylor.)

A. "M. D."?

Q. "M. D."            A. Maryland.

Q. What is the difference between an "M. D." for a doctor and an "MD" for Maryland?

A. Well, most of the time it is—the "MD" is used after Maryland sometimes, to show it is for Maryland—an abbreviation.

Q. If you saw those two letters painted on the street, what would they suggest to you?

A. Just painted on the street, it wouldn't suggest anything in particular.

Q. If you saw them painted on a wall, what would they suggest to you?

A. Just plain on the wall?

Q. Yes.

A. Wouldn't suggest anything in particular, unless I thought of Maryland or some medical doctor, or something like that.

Q. If you saw those two letters on a piece of paper, if you wrote them yourself, "MD," what would they suggest to you?

A. What would they suggest? [71]

Q. Yes. Suppose I wrote those two letters "MD", on a piece of paper, and you looked at it, what would they suggest to you?

A. Well, it would suggest—well, it always comes to me "medical doctor" when I see "M. D.", maybe, most of the time.

Q. Does it make any difference how the "MD" is written or spelled? If you were writing John Jones—by the way, what does "MD" stand for.

(Testimony of Robert Ernest Taylor.)

A. What does "MD" stand for?

Q. Yes.

A. Well, in a lot of cases it stands for a medical doctor.

Q. Did you ever see a man's name "John Jones, M. D."?

A. "M. D."?

Q. Yes.

A. No. I seen a lot of other peoples' names, "M. D." after them, but I never saw John Jones.

Q. Very good. Now, what doctor do you know that uses the letters "M. D." after his name?

A. I don't know any doctors in this town. I never go to doctors. [72]

#### Redirect Examination

By Mr. Bellinger:

Q. As a matter of fact, Mr. Taylor, do you or do you not still say that from reading the advertisement you get the impression that the product was endorsed by the medical profession?

A. Yes; it does.

#### Recross Examination

By Mr. Hayden:

Q. What do you mean by "endorsed", Mr. Taylor?

A. "Endorsed"?

Q. Yes.

A. That it has been approved by the medical profession. [76]

PAUL SAMUEL CURRIN

was called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Bellinger:

Q. Mr. Currin, what is your full name, please?

A. Paul Samuel Currin.

Q. What is your address?

A. Home address is 295 Upton Street, Northwest.

Q. What is your business address?

A. 2017 Virginia Avenue, Northwest.

Q. Both in Washington, D. C.?

A. That is right.

Q. What is your business?

A. Sales manager, Logan Motor Company.

Q. How long have you been with them?

A. Just about four years.

Q. Prior to that, did you live in Washington?

A. Yes, sir. [79]

Q. Mr. Currin, I want to show you what is marked as Commission's Exhibit No. 12 in this case, which is an advertising sheet or folder, and ask you to look at it, please, and tell us what impression it conveys to your mind with respect to the products advertised.

A. Well, first, "M.D."—doctor—"M.D.", that stands for doctor. The name itself would more or less make me think it was approved by a doctor, and this cross, with the nurse on it, just looking at it, not reading it through, several places in here it says "approved by doctors and surgeons".

(Testimony of Paul Samuel Currin.)

Q. And you get what impression, then, about those products?

A. That they are *improved* by the medical society or doctors and professional surgeons.

Q. What gives you that impression?

A. Well, the "M.D.", with the cross and nurse on it, would give me a better impression than any other thing on here.

Q. And the name?

A. Yes; "M. D.", the name.

Mr. Hayden: What name?

The Witness: "M.D."—the name or initial.

By Mr. Bellinger:

Q. Have you read some of the ads?

A. Yes; I have read several of them here.

Q. After reading them, do they change that impression as you arrived at it? [80]

A. No; it does not change mine, because the majority of them it is approved by them.

Q. Then, I will ask you, Mr. Currin, to look at this sheet, marked Commission's Exhibit No. 13, and tell us what impression those ads convey to your mind in respect to the products?

A. Well, it would be the same thing in my mind—the picture of this nurse, and it says here still "approved by medical society".

Q. All right, sir. What does this one, which is marked Exhibit No. 14, convey to you?

A. Well, I don't see where the picture, one of the pictures, would make me think so, but it says

(Testimony of Paul Samuel Currin.)

“approved by doctors and surgeons”—“physicians and surgeons”.

Q. What about this picture (indicating)?

A. Well, that picture—I was speaking of these two up here. As I told you before, the “M. D.”, with the cross and nurse on it, makes me think that is approved by the medical society or doctors.

Q. All right, I will ask you to look at this box or can, marked Commission’s Exhibit No. 11, which is labeled “M. D. Medicated Douche Powder”, and ask you what impression that gives to your mind when you see it.

A. It gives me the same thing—“M. D.”, doctor, and the cross and nurse, would give me the same impression.

Mr. Bellinger: You may cross examine. [81]

#### Cross Examination

By Mr. Hayden:

Q. Mr. Currin, what is your age?

A. My age is 25.

Q. 25? A. Yes, sir.

Q. Are you married? A. No, sir.

Q. Did you ever see that advertisement before today?

A. Before today, this year (indicating)?

Q. Yes.

A. Well, I couldn’t say exactly. I don’t believe I have. I may have two years ago when this *following* to me. He may have had the same thing, but I wouldn’t say yes or no, because I couldn’t remember two years ago.

(Testimony of Paul Samuel Currin.)

Q. By this "this fellow", do you mean——

A. Whoever it was talking. I remember talking to somebody about it.

Q. This was Mr. Bellinger, two years ago?

A. I couldn't remember: I told him the other day I couldn't remember.

Q. Where were you talking to him?

A. At 1111 - 18th Street.

Q. Did he come into your place there?

A. No, sir; it was at 18th and M. I was out on the used [82] car lot at the time.

Q. What did he bring in to you?

A. If I am not mistaken, he had some paper.

Q. Tissue paper?

A. I believe it was some kind of paper—toilet paper or tissue paper.

Q. Was it in a book?

A. He had it in a case. I wouldn't say it was in a book.

Q. And you can not remember the man's name?

A. No, sir, I can not.

Q. He showed you some paper?

A. He showed me several different things.

Q. What was on the paper?

A. I don't remember.

Q. Was it "M. D." on the paper?

A. I couldn't say definitely. I don't remember.

Q. Was it toilet paper or tissue paper?

A. It was some kind of toilet paper, as I remember.

Q. What did he ask you?



(Testimony of Paul Samuel Currin.)

A. He asked me if I approved of it, and did I like it, and I said as far as I knew, it was all right. I didn't know anything about it. I found it was—I remember looking at the thing, and I was talking to him, and he explained a little more about it. Then I said, "I think you must have the wrong people," and then he explained to me about the situation. [83]

Q. What did he say about the paper that he showed you?

A. He asked me if I approved of it, whatever it was he had, and didn't I think it was a good thing.

Q. What did you say to that?

A. I said, as far as I knew, it was.

Q. Were the letters "M. D." on the paper he showed you?      A. I don't remember.

Q. Now, when you came in here in response to a subpoena, you talked to Mr. Bellinger about the advertisements?      A. Yes.

Q. What did Mr. Bellinger say to you about the advertisements?

A. You mean when we were out there?

Q. Yes.

A. He asked me to look at it and read it and look at the pictures and form my own opinion of it, not somebody else's.

Q. Did he call your attention to those letters, "M. D."?

A. Well, he told me to look at the letters on the box and read them and read the whole thing.

Q. And after you had looked at it, what did you say?

(Testimony of Paul Samuel Currin.)

A. He asked me what my impression of it was, and what I think, and I told him.

Q. What did you tell him?

A. I told him, just looking at it and seeing "M. D." on it, and the picture of the red cross and the nurse, naturally [84] you would think it was approved by doctors.

Q. Is any doctor's name signed to any of those papers? A. No.

Q. You spoke of it being approved by a medical society. What do you mean by that?

A. Well, I don't mean medical society; I mean just doctors, whether a medical society or not, just by looking at the "M. D."

Q. But you said "medical society". What did you have in mind?

A. I meant doctors as a whole.

Q. You meant all doctors?

A. Not every one individually, but I mean looking——

Q. Please answer my question. Do you mean that certain doctors had approved it? A. No, sir.

Q. What did you mean?

A. Well, I said it was approved by doctors. I remember saying "medical society", but I don't know.

Q. You said "medical society". What did you mean when you said "approved by doctors"? Did you mean one doctor, a million doctors or a thousand doctors, or how many?

A. Not many particular numbers.

Q. Which doctors did you have in mind—doctors

(Testimony of Paul Samuel Currin.)

in the District of Columbia or in Chicago—— [85]

A. I don't say any doctors anywhere.

Q. I am trying to get at what you had in mind, Mr. Currin. You said it looked to you as though that product had been approved by doctors. Now, what doctors?

A. Well, no particular doctor, I am telling you. I said nothing there tells you it has been approved by doctors, but just looking offhand at it, looking at the picture and the "M.D." on there——

Q. It looks as though it has been approved by doctors?

A. I didn't say it had been. I said, from the looks of the thing, "M. D." on it, you would naturally think offhand it had been approved.

Q. By doctors? A. Yes.

Q. By how many doctors; by any class of doctors?

A. No; by not any particular number of a class, either one, here.

Q. If I told you that that product had been approved by one doctor, would that be a natural thing for you to believe, looking at the product?

A. It would be a natural thing for me to believe if you told me it was approved by one doctor. I am just going by the picture and the letters.

Q. Does that picture convey to you that the doctors had approved it? [86] A. No, sir.

Q. Does it convey to you that all doctors in the District of Columbia had approved it?

A. No, sir.

(Testimony of Paul Samuel Currin.)

Q. Does it convey to you that the doctors in a particular section of the city——

A. I said the “M. D.” on there, the picture of the nurse, the red cross—looking at it offhand, you would think it was approved by doctors.

Q. By a doctor?           A. By doctors.

Q. By doctors?           A. Yes.

Q. You have no idea of how many you have in mind?           A. That is right.

Q. When you said “approved by medical society,” what did you mean by that?

A. Well, I didn’t——

Q. Where did you get that idea?

A. I don’t know.

Q. What is a medical society?

A. I guess it is the doctors.

Q. Well, did you discuss “medical society” with Mr. Bellinger?           A. No. [87]

Q. What do you mean by “medical society”?

A. Well, I was speaking of any medical society; I mean a group of doctors, or something of that sort.

Q. A group of doctors?           A. Yes, sir.

Q. Is there a medical society in the District of Columbia?           A. I don’t know.

Q. You don’t know?           A. No.

Q. Did you get the impression that this product was approved by the Medical Society of the District of Columbia?           A. No.

Q. You did not get that?           A. No.

(Testimony of Paul Samuel Currin.)

Q. Now, why do those letters "M. D.", suggest a doctor to you?

A. Just naturally, "M. D." is doctors. All I ever saw said "M. D." on it.

Q. Did you ever see a doctor's sign with the letters "M. D." on it?           A. With "M. D."?

Q. Yes.

A. On all the prescriptions and things, they put "M. D." on them.

Q. No. Have you ever seen a doctor's sign, or when you [88] look in the *directly*, or what not, do you ever see a doctor's name with "M. D."?

A. Write the name out and "M. D." at the end of it?

Q. Yes.           A. Yes, sir.

Q. Did you ever see that?           A. Yes.

Q. Is is written out exactly there like the "M. D." you have seen with a doctor's name?

A. I don't know if it is exactly like that, but I have seen them at the end of a doctor's name.

Q. Do the letters "M. D." that you see at the end of a doctor's name correspond exactly with these letters as they are there?

A. It has the period between them.

Q. Where?

A. I mean on most of them that I looked at.

Q. Where was the period?

A. In between the "M" and "D".

Q. Just one period between the "M" and "D"?

A. Yes.

Q. You never saw the period before the "M"

(Testimony of Paul Samuel Currin.)

and after the "D"? A. I don't know exactly.

Q. Do you know what that period stands for, that you have [89] seen? A. No.

Q. Why do you associate the letters "M. D." with a doctor? What does that mean?

A. Well, in my mind "M. D."—it meant—he asked me for my own personal opinion, and that is what I told him.

Q. I am asking what it means there to you; what do the letters "M. D." stand for?

A. Medical doctor.

Q. And they are written "M" dot, "D"; is that right?

A. Yes. They are always written like that.

Q. Did you ever see the letters "M. D." without thinking of a doctor?

A. I guess I have. I don't remember. I don't recall exactly.

Q. Did you ever see any peoples' initials "M. D." A. Yes.

Q. Then, the letters "M. D.", do not always mean a doctor; do they? A. Not always. [90]

Mr. Bellinger: Your Honor, I now propose to read into the record this definition of "M. D.", taken from page 2995 of Webster's New International Dictionary, Second Edition, Unabridged.

Trial Examiner Reeves: You may proceed. [96]

Mr. Bellinger: It is as follows:

"M. D. *Medicinae Doctor* (L. Doctor of Medicine); Middle Dutch; *maindroite* (Fr., right hand). (Mus.)". [97]



MAURICE EUGENE BACHMAN

was thereupon called as a witness on behalf of the Respondent, and, having been first duly sworn, testified as follows: [99]

Direct Examination

By Mr. Cohn:

Q. Your full name is Maurice Eugene Bachman?      A. Yes, sir.

Q. And where do you reside, Doctor?

A. 16647 Parkside.

Q. That is in the City of Detroit?

A. City of Detroit.

Q. What is your office address?

A. 569 Fisher Building.

Q. That is also in the City of Detroit?

A. City of Detroit.

Q. What degrees do you have, Doctor, from universities or colleges?

A. Bachelor of Science in Medicine, and Doctor of Medicine.

Q. From what university?

A. University of Michigan. I received my Bachelor of Science Degree in 1923 and my Doctor of Medicine Degree in 1925.

Q. You are at the present time a practicing and licensed physician?      A. I am.

Q. And how long have you been practicing, Doctor?      A. Since 1926. [100]

Q. You have been in practice continually since that time?

(Testimony of Maurice Eugene Bachman.)

A. Except for some post graduate work that made me upset my practice.

Q. What post graduate work have you had?

A. Three years post graduate work in obstetrics and gynecology.

Q. And where was it taken?

A. Assistant to Dr. Kirschbaum, Lying-In Hospital, Chicago, and Chicago Post Graduate School, and Wayne University.

Q. What medical societies are you a member of?

A. Wayne County Medical Society, Michigan Medical Society, and American Medical Association.

Q. Do you specialize in any particular branch of medicine?

A. Yes, I do. Obstetrics and gynecology.

Q. And your specialized work and training has been along those lines?      A. Yes.

Q. Are you familiar with the drug product known as M. D. Douche Powder?      A. I am.

Q. Do you know the formula for that product, Doctor?      A. Yes, I do.

Q. Will you state that formula? [101]

A. Alum, fifteen drams; zinc sulphate, six drams; boric acid powder, twelve ounces; oxyquinolin sulphate, one dram; oil white thyme, five drops; oil of peppermint, one and one-half drams; phenol, two drams, and eucalyptol, three minims. That makes up 16 ounces.

Q. 16 ounces?      A. Yes.

(Testimony of Maurice Eugene Bachman.)

Mr. Bellinger: Doctor, if you will pardon me, and give me that list of ingredients again, please.

Trial Examiner Reeves: Off the record.

(A discussion ensued off the record.)

By Mr. Cohn:

Q. Do you know the characteristics and qualities of each of these ingredients? A. I do.

Q. Will you tell us what they are?

A. The first one, alum, is an astringent; zinc sulphate is mildly antiseptic; boric acid powder is mildly antiseptic; oxyquinolin sulphate is germicidal; oil of white thyme is flavoring; oil of peppermint is flavoring; phenol is germicidal; and eucalyptol is a deodorant.

Q. Having in mind the formula you have stated and the characteristics and qualities of these ingredients, will you tell us what, in your opinion, the value of this powder is as a germicide? [102]

A. Well, it is cleansing, antiseptic, and germicidal, mildly germicidal.

Q. And what value, in your opinion, Doctor, does this powder have as antiseptic?

A. It is definitely antiseptic.

Q. What effect, Doctor, in your opinion, would this powder have on bacteria?

A. Well, it has a tendency to prevent the growth of certain bacteria, and it will kill certain bacteria, too.

Q. Would you care to compare it with other germicides as a destroyer of bacteria?

(Testimony of Maurice Eugene Bachman.)

Mr. Bellinger: I don't think that would be a competent comparison. I think the witness can tell what it will do. He can give his opinion as to how effective it may be, or what the therapeutic value is, but I don't know that a comparison with any other product——

Trial Examiner Reeves: Will the reporter read the question back?

(The question was read.)

Mr. Bellinger: It was my thought that there were probably other products on the market more familiarly known.

Trial Examiner Reeves: I think if you would have the witness describe the use and effect of this remedy and then he might state, if he cares to do so, [103] what competing remedies or preparations there are.

By Mr. Cohn:

Q. I believe you have testified, Doctor, that this preparation is mildly germicidal?

A. Mildly germicidal, and definitely antiseptic.

Q. Have you ever prescribed this powder to any of your patients? A. Yes, I have.

Q. To what extent have you prescribed it?

A. Quite a bit.

Q. Do you know what the results have been from the use of this powder? A. I do.

Q. Will you state that, please?

A. They were satisfactory. You just asked me a little while ago on the action of it. Would you

(Testimony of Maurice Eugene Bachman.)

want me to answer that? I was asked about the action of the thing, how the thing works. Was that what you wanted me to tell?

Q. We will cover that later. Now, Doctor, will you describe the effect of this powder as a germicide?

A. Well, this is a douche powder, used for douches in women, and the reason that this powder is antiseptic and germicidal for women is because it has a P. H. value of 4 or less, which means that this is an acidifying preparation. A teaspoonful of this in a pint of water dissolved [104] will act as an acidifier for the vagina.

Now, the normal vagina is acid and no harmful bacteria will grow in an acid medium in the vagina, but if the vagina is alkaline or subjected to alkaline douches, pathogenic bacteria will grow in the vagina, producing discharges known as leukorrhea and erosions. Now, experimental work was done by Dr. Karnaky of Houston, Texas, who is one of the outstanding gynecologists in the country, with acidifying tablets in the vagina, and he has shown that if tablets or a douche——

Mr. Bellinger: I object to the witness relating something that somebody else has done unless he knows of his own knowledge the details that he can give us.

Trial Examiner Reeves: It might be that the doctor is quoting from medical literature. If that is true, he has a right to do it.

Mr. Bellinger: Well, if it is knowledge on his

(Testimony of Maurice Eugene Bachman.)

part rather than hearsay—if he is willing to swear as of his own knowledge to certain things, why, we have no objection.

Mr. Cohn: I can't see any objections to quoting recognized medical authorities, and the conclusions reached by those authorities on the basis of prolonged and thorough research. I don't think Dr. Bachman is finished, but I think if you do allow him to continue—— [105]

Trial Examiner Reeves: I think I will overrule the objection.

A. (Cont'd.): Dr. Karnaky has published, through the Year Book of Gynecology and Obstetrics, which is published every year in Chicago, for the years 1936, 1937, 1938, and 1939, on these researches, which he has done, and which we have been able to confirm here in Detroit in our own practice, that an acidifying douche will both prevent the growth of bacteria and will prevent the formation in one-third of the patients of erosion of the cervix; that the treatment that he has used was either a boric acid acidifying tablet or a vinegar douche, whose P. H. value was around 4, or lower.

Mr. Bellinger: Doctor, excuse me for interrupting you now and then, but I want to get the full facts and, as a layman, I don't understand some of these terms, and I am sure the Trade Commission doesn't either.

Now, what do you mean by P. H. value?

The Witness: That is the alkali acid ration of



(Testimony of Maurice Eugene Bachman.)

the preparation or of the substances used. P. H. 3 is definitely acid, while P. H. 7 is definitely alkaline. That is, the alkalinity and acidity of any preparation is judged by the P. H. value, or when you speak of a P. H. 4, it means that the acidity is 4, according to certain standards that we are discussing here. [106]

Mr. Bellinger: I see. Thank you.

The Witness: Now, this preparation was used on my patients after I found that it had an acidifying P. H. value of 4 or lower, and after equally good uniform results as had been produced with any other acidifying preparation. I was able to clear up a discharge and to prevent, in some of these patients, the formation of erosion. The reason I used this douche was because prior to that we had no conception until this was brought out that it made much difference what you used in a douche, and, of course, most of the recommendations were the use of baking soda douches and after it was shown experimentally that these douches had a tendency to reduce the glycogen content in the cervix, thus producing an erosion. Today it is the best knowledge to use a glycogen medium in the cervix and to prohibit the pathogenic germs from growth. By Mr. Cohn:

Q. It is your opinion, then, Doctor, that an important factor in a good douche powder is that it be an acidifying solution; is that correct?

A. That is correct.

(Testimony of Maurice Eugene Bachman.)

Q. Will you tell us whether, in your opinion, the M. D. Douche Powder contains this characteristic?

A. Yes, it does. [107]

Q. On what do you base your opinion?

A. I had laboratory tests made by the Charlton Laboratory chemists. They reported to me the P. H. reaction of one teaspoon per pint as 3.9.

Q. What does that indicate, Doctor?

A. That it is an acidifying mixture. That as a douche, it would be acid. And, therefore, it is an antiseptic, as far as vaginal douches are concerned. Also, the antiseptic test was done by the chemists, and they showed that staphylococcus aureus would not grow in M. D. douche solution.

Q. That is a form of bacteria?

A. Yes, sir.

Q. What do you prescribe today as a douche, Doctor?

A. I vary. Most favorite is the cheapest—vinegar and water, but I also prescribe this preparation, because it has a very fine deodorant powder.

Q. You have told us, Doctor, that you have prescribed M. D. Powder as a douche powder to your patients on numerous occasions; is that correct?

A. Yes.

Q. Have any of your patents ever raised the question as to the meaning of the letters "M. D." on this product?

A. No.

Mr. Bellinger: We object to that. [108]

Trial Examiner Reeves: Objection overruled.

(Testimony of Maurice Eugene Bachman.)

By Mr. Cohn:

Q. The question, Doctor, that I will ask you is: Have any of your patients ever raised the question as to the meaning of the letters "M. D."?

A. No.

Q. What effect, if any, Doctor, would you say there would be on the tissue from the use of this M. D. Powder?

A. It is not injurious to tissues.

Q. And, in your opinion, is this powder safe, dependable, and efficient?

A. I believe so.

Q. And on what do you base that answer, Doctor?

A. Well, the fact that I have used similar powders of the same preparation. We have used these things in school since school days, and have never found any irritation to the tissue. We find definite antiseptic value and, being an acidifier, I believe is germicidal and antiseptic to the vaginal flora.

Mr. Bellinger: Off the record.

Trial Examiner Reeves: Off the record.

(Discussion ensued off the record.)

By Mr. Cohn:

Q. In your opinion, Doctor, does the trade name or trade letters "M. D." on this product imply or infer that it is a [109] preparation of medical doctors?

Mr. Bellinger: Now, I think that question is certainly objectionable, Your Honor, and I object

(Testimony of Maurice Eugene Bachman.)

to it. I think that is a matter for the Commission to decide, and the only thing the witness may testify to is as to whether or not it misleads him.

By Mr. Cohn:

Q. Well, I mean the question that way. That is my intention, as to whether or not it leads him to believe, whether the letters to him mean that it is a preparation of medical doctors.

Trial Examiner Reeves: The witness may state what significance the letters have to him.

By Mr. Cohn:

Q. That is all I intended by this question.

A. Well, it says, "Medicated Douche Powders." That is what it is supposed to stand for. The meaning behind it, I can't tell you. To me it means what it says on it, a medicated douche powder. Naturally, the first thing "M. D." brings to my mind is, being a doctor myself, it means "doctor", but it is self-explanatory, when it says: "Medicated douche."

Q. You have no financial interest in the Stanley Laboratories?      A. None whatever. [110]

Q. You have no financial interest in the outcome of this hearing, either directly or indirectly?

A. None whatever.

Q. You are testifying here today, to the best of your knowledge and to those matters that you know about in connection with this preparation; is that right?

A. I am. It is my own original formula.

Q. You say this is your own original formula?

(Testimony of Maurice Eugene Bachman.)

A. The origin to this formula was given to us in the senior year in class, without oxyquinolin sulphate, as a douche powder, which, as the professor at that time put it, would be very helpful in the practice of medicine, and I originally wrote this prescription for my brother's wife who had a discharge, and he wrote to me and asked me what to do about it. Since that time he had it added, added oxyquinolin sulphate to it, and prepared this powder himself. After preparing it, he sent me a sample of it, several samples, as a mater of fact, and I was able to use it here on several patients, and felt that the results were uniformly satisfactory, so I encouraged that patients use this particular preparation.

Q. Now, what particular properties does this oxyquinolin sulphate have?

A. It is a germicide and spermatozoicide. I particularly recommend this powder in cases where people use diaphragms [111] and jellies, because a lot of these jellies and the things that they use are alkaline, and if you don't use an acidifying douche, you may get into trouble. You may have irritation, discharge, and erosions of the cervix.

Q. Where did you say you first obtained this formula?

A. From the professor of obstetrics and gynecology when I was a student at Michigan University.

Mr. Cohn: That is all.

(Testimony of Maurice Eugene Bachman.)

Cross Examination

By Mr. Bellinger:

Q. That was how many years ago?

A. 1924.

Q. Fifteen or sixteen years ago?

A. That is true.

Q. I believe you said, Doctor, that you received your Bachelor of Science Degree in 1923.

A. That is true.

Q. And you completed your medical education in two years? A. 1925.

Q. Was that a regular two-year course, Doctor?

A. No. That is a combination degree—you spent—first you had to get in some “Lit” and then you get your Doctor of Medicine Degree.

Q. And all that was in the University of Michigan? A. Yes, sir. [112]

Q. Did you say that oxyquinolin sulphate was the only ingredient added to this formula after you first had it? A. That is true.

Q. And that was added by Mr. Bachman in Portland, Oregon? A. That is true.

Q. About how long has that been included in the formula?

A. It is rather recent. I did not use this powder except probably four or five years ago I started using it, so I don't know when it actually was put out. I know that the original prescription was sent to him around 1926 for the douche powder for his own wife, and the next thing I heard of it was when



(Testimony of Maurice Eugene Bachman.)

he sent me it in a box with the powder, and that was about 1935 or 1936, I believe that was the date. So I don't know when he added that to it.

Q. In 1935 or 1936, when you got some of it, it had oxyquinolin sulphate in it them?

A. That is right.

Q. You are the brother, are you not, of Mr. Bachman, who is one of the Respondents in this case?

A. I am his older brother.

Q. And he is the owner of the Stanley Laboratories?

A. I don't really know who the owner is. I never kept track of it.

Q. He is the proprietor?

A. I don't know that. I mean, I know that he has some- [113] thing to do with it, but I don't know who owns it.

Q. You know that is a business he is engaged in?

A. All I know is that the laboratories are named after his son, who is Stanley, and that is all. What their ownership is, I don't know.

Q. But you do know that he is charged as a Respondent in this case?

A. Yes, I do.

Q. And you have had correspondence with him and, perhaps, his counsel, relative to this case since it was started?

A. I have, naturally. That is true.

Q. He is not a physician, is he?

A. No; he is a pharmacist.

Q. He is a licensed graduated pharmacist, is he?

A. Yes, sure.

(Testimony of Maurice Eugene Bachman.)

Q. Is he a chemist?

A. Well, I don't know much of a distinction between a chemist and a pharmacist. I don't know what is required of them. I imagine that most pharmacists are chemists, in a way.

Q. You answer that question by reason of the fact that you know, do you not, Doctor, that a graduated pharmacist has been required to study chemistry?

A. That is right.

Q. Well, you would not say that this preparation is anything [114] but a douche, would you?

A. That is the only thing I use it for. I feel that it is very beneficial as a douche. I have not used it for anything else.

Q. Now, Doctor, is it necessary, in prescribing a douche for a patient, to first diagnose that patient's trouble? In other words, is it possible that a patient undergoing certain conditions would require one sort of a douche, and maybe another sort of a douche would not be desirable for that patient, but would be good for somebody else?

A. Well, I don't believe that douches are necessary for any normal individual. But, nature acts as a douche by providing certain secretions in the vagina which are acid secretions or lactic acid.

Q. So that a normally healthy woman does not need any douche?

A. A normally healthy woman does not need any douche at all.

Q. Then, if she needs a douche, there is some condition there that requires attention?

(Testimony of Maurice Eugene Bachman.)

A. If she needs a douche, the douche that she needs is an acidifying douche. She can use lactic acid or she can use vinegar or this preparation or Lauri puts out a preparation similar to this, or any of those douches which are definitely acidifying and will produce a P. H. value in [115] the vagina around 4 to 5, is a douche that is recommended. The alkali douches, or douches that people have been using, as a rule, because of ignorance, and even prescribed by physicians for the same reason, because of ignorance, are detrimental to the patient, and will not only not stop the growth of bacteria, but will aid the growth of bacteria, while any acidifying douche will prevent the growth of bacteria, and will increase the glycogen content in the cervix, and prevent these erosions that women come into the office with so often.

Q. The purpose of a douche is largely for cleansing and medication in the form of a destroying bacteria, isn't it?

A. The douche is cleansing, and it should be antiseptic.

Q. What is the distinction, Doctor, between a germicide and an antiseptic?

A. An antiseptic is a preparation which will control or prevent, rather, the growth of bacteria, and a germicide is a preparation which, when the germ comes in contact with it, will be destroyed. The standard that is used, that an antiseptic can be proven to be an antiseptic is if it destroys the

(Testimony of Maurice Eugene Bachman.)

staphylococcus aureus and a germicide should be able to destroy any bacteria.

Q. In other words, a germicide is more powerful than an antiseptic? [116]

A. Not necessarily. A germicide is more powerful only in the sense that it will kill all bacteria, while an antiseptic may prevent many forms of a certain germ which may be prevented by antiseptis, and a germicide will kill anything it comes in contact with.

Q. Well, now, Doctor, you testified on direct examination, I believe, that these letters "M. D.", in connection with this preparation, were not misleading to you. With your experience as a physician, do you think it would be possible for any such name on any preparation to mislead you? Doctor, before you used it, or prescribed it, you would know what was in it, wouldn't you?

A. You mean would I use something before I knew what was in it; is that it?

Q. Yes, or prescribe it.

A. No, I would not prescribe anything if I did not know what it was before I prescribed it.

Q. You know, as a matter of fact, don't you, Doctor, that medical societies or the medical profession does not, as a body, endorse or sponsor or put on the market any preparations, don't you?

A. It is true, except the American Medical Association.

Q. So that it would not mislead you, with your

(Testimony of Maurice Eugene Bachman.)

intelligence and training and profession back of you?

A. Well, I know that as far as I am concerned, that what [117] this thing stands for is just what it says on it, because it is written right on there to tell me.

Q. And another reason why it could not mislead you is because you are practically the originator of the formula?

A. I am not. The originator may have been 50 or 75 years before me. It was simply given to us in a lecture by the professor at that particular time when we were studying it in school.

Q. So that you knew what was in it when you got it from the professor, didn't you?

A. Yes, I had some idea.

Q. And you are the originator of it, in so far as your brother's use of it is concerned?

A. Well, I got the prescription. Of course, every druggist—every druggist in town has prescriptions from me that they could do the same thing with.

Q. Now, you said that none of your patients have ever raised the question as to its name. Is it customary for your patients to enter into arguments or raise questions with you about prescriptions that you give them?

A. Well, this prescription I have often given them. For instance, he originally sent some samples which I used on certain individuals, and they proved satisfactory, so I had him send me some of

(Testimony of Maurice Eugene Bachman.)

these "M. D." preparations, and I have given it to patients for use, instead of having [118] to go to a druggist and a drug store to buy it. I wanted to know what value it had, and they got the box, I mean, I was able to hand them the box, and they have never asked me what it stands for. They just wanted to know whether it worked.

Q. Your patients don't usually ask you those questions, what the name stands for? But they do ask you whether it works or not? A. Yes.

Q. And they have confidence in you, don't they?

A. Yes.

#### Redirect Examination

By Mr. Cohn: [119]

Q. You said you had obtained this formula in 1926 and that was the reason I was asking you how it compared with the others.

A. This was recent work. I mean at the time we gave it. But we knew no reason why it should. I mean we did not understand the reason for the use of this formula. Somebody concocted it and we used it, but never really knew what the thing did, why it should help. [120]



EDWARD A. BACHMAN

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Rhodes:

Q. Give your full name to the Reporter.

A. Edward A. Bachman.

Q. Where do you live, Mr. Bachman?

A. 2235 Northeast 25th Avenue.

Q. Portland? A. Portland.

Q. What is your business?

A. At the present time I am in the Army on active duty.

Q. What business are you engaged in as a general thing in the [123] City of Portland?

A. Drug and manufacturing.

Q. Where is the business located?

A. 439 Northwest Broadway is the drug store; 411 Northwest Broadway is the manufacturing and drug distributing.

Q. How long have you been engaged in manufacturing and distributing drugs?

A. Since 1935.

Q. What drugs do you manufacture?

A. Put up preparations for sale in drug stores.

Q. What preparations?

A. Cough syrup—such things as cough syrup and liniments and U. S. B. & N. F. preparations.

Q. Do you manufacture or compound any medicinal preparations?

(Testimony of Edward A. Bachman.)

A. U. S. B. & N. F. are medicinal preparations.

Q. Do you compound or manufacture any medicinal preparations?

A. Yes, sir, the U. S. B. & N. F.

Q. What preparations do you manufacture or compound?

A. For use in drug stores, you mean?

Q. Any use. A. Any use?

Q. Yes.

A. Well, we made up citrate of magnesia, Bashman's Mixture, and Chloroform Liniment; also vitamin combinations, specifically by name called B-plex, that is an infusion of synthetic [124] vitamins.

Q. Do you manufacture or compound a mixture which you designate MD. Medicated Douche Powder? A. No, sir.

Q. Do you sell a douche powder which you designate as MD. Medicated? A. Yes, sir.

Q. How long have you sold that?

A. Since 1936.

Q. By whom is that compounded or prepared?

A. McKesson & Robbins, Portland, Oregon; originally Blumaeur & Frank, then McKesson & Robbins, Portland, Oregon. If it is permissible I would like to add that we have compounded it for prescription purposes.

Q. You say you have——

A. I say I have compounded it for prescription purposes—that MD powder.

Q. And how long have you been selling that MD powder? A. Since 1936.

(Testimony of Edward A. Bachman.)

Q. Do you advertise it? A. Yes, sir.

Q. In what medium?

A. Newspapers and pamphlets.

Q. Pamphlets or circulars accompanying the preparation.

A. Yes, sir, at one time. We don't now. [125]

Q. Were those pamphlets or circulars and newspapers circulated through the mails?

A. Yes, sir.

Q. Are they now advertised in those mediums and circulars in the mails? A. No, sir.

Q. When was the circulation through the mails discontinued? A. In 1939.

Q. What date? A. October, 1939.

Trial Examiner Reeves: Off the record.

(A discussion off the record.)

Trial Examiner Reeves: On the record.

Q. (By Mr. Rhodes) The complaint on pages 3 and 4 sets out certain representations that are purported to have been made in the mediums described by you just now. Are those correctly set out in the complaint? A. Yes, sir.

Q. Did you at one time or do you now sell a preparation known as Contra-Jel?

A. No, sir—oh, did I at one time? Yes, sir, at one time, but not now.

Q. When did you discontinue the sale of that?

A. In 1938, I believe.

Q. About what period in 1938?

A. I would guess it was in the middle of the year—say [126] August.

(Testimony of Edward A. Bachman.)

Q. Was that manufactured or compounded by you?      A. No, sir.

Q. Was it manufactured or compounded for you?

A. Yes, sir.

Q. Did the manufacturer place the name on it?

A. No. Was that question "Did the manufacturer place his name on it"?

Q. No, the name.

A. The name—through our suggestion. We named it. They put it down but we named it.

Q. The formula for that was presented to the manufacturer by you.      A. No.

Q. Well, will you explain your former answer.

A. That formula is the exact duplicate of a preparation called Koromex manufactured by the Holland-Ranthon Company of New York who manufactured that same article for us under our name—Contra-Jel.

Q. And they put the name on it?

A. They stuck the label on it. The original shipment they sent us had the labels stuck to the tube called Contra-Jel.

Q. Was there any question between you and the manufacturers with respect to that product, with the use of your name or their name in connection with the sale of it? [127]      A. No, sir.

Q. How many shipments of that product did you receive from the manufacturer?

A. About three shipments.

Q. When was that?

A. 1933 was the first shipment.

(Testimony of Edward A. Bachman.)

Q. When was the last?

A. I am guessing now. I would say the last was about 1934 somewhere, or 1935—late in 1934.

Q. Didn't you request permission of the manufacturers to use their name in connection with the advertising of it and didn't they decline?

A. We didn't use their name.

Q. Will you answer my question, please?

A. Well, I don't understand it.

Mr. Rhodes: Read the question.

(Last question read by reporter.)

A. No.

Q. (By Mr. Rhodes) What was the reason that they ceased to manufacture this product for you?

A. The sale was too limited, and we had difficulty with the product because it froze up in shipment, was in bad condition, and they failed to make adjustment.

Q. And you discontinued the sale of that product about what period? [128]

A. In 1938.

Q. There is a stipulation that has been entered into between you and the Federal Trade Commission, is there not, either by you personally or your attorney for you, in which you state that you have discontinued the sale of Contra-Jel?

A. Yes.

Q. And agreed not to resume the sale of it?

A. Yes, sir.

Q. Now that product was also advertised by you, was it not?

A. Yes, sir.

Q. In the same mediums as the other product?

A. Yes, sir.

(Testimony of Edward A. Bachman.)

Q. Did you also at one time manufacture a produce known as M.D. Supercones?

A. We didn't manufacture them, no, sir.

Q. You did not manufacture it, but you sold it.

A. Yes, sir.

Q. During what period did you sell that product?

A. Between 1936 and 1938.

Q. Who were the manufacturers of that product?

A. Norwich Pharmaceutical Company.

Q. This product was also advertised by you, was it not?

A. It was not in the newspapers. It was advertised through inserts—not in the newspapers.

Q. The product with those inserts in were shipped by you in [129] interstate commerce? A. Yes.

Q. Through the mails?

A. I don't recall through the mails, but interstate commerce.

Q. You have also entered into a stipulation with the Federal Trade Commission with respect to that product? A. Yes, sir.

Q. Not to sell it in the future. A. Yes, sir.

Q. And you have discontinued the sale of it?

A. Yes, sir. May I insert one thing here. When you asked me a question about advertising Contra-Jel, that was advertised only during the year 1933, as far as newspapers were concerned.

Q. But by inserts and others it was advertised during the whole time? A. Yes, sir.

Q. Do you also manufacture a product known as Femeze? A. No, sir.



(Testimony of Edward A. Bachman.)

Q. Did you sell a produce known as Femeze?

A. Yes, sir.

Q. During what period did you sell that product?

A. A short period—in 1936.

Q. Was that product advertised?

A. Not in newspapers. [130]

Q. Through the same mediums the other products were?  
A. Only through inserts.

Q. In the package. A. In the package.

Q. Not by——

A. Newspapers.

Q. Pamphlets?

A. Well, the pamphlets were inserts. Our inserts were in pamphlet form.

Q. Circulars?

A. Well, I would say pamphlets would cover all the advertising.

Q. But other than those that were contained in the package there were no advertisements of that product?

A. I believe we did have a pamphlet besides the inserts in the package.

Q. And did that advertising matter appear on the package?  
A. I didn't get the question.

Q. The package or container in which the product was shipped, did the advertising matter appear on the package?

A. On the package? Besides the label on the package you mean, or in the package?

Q. On the package, whether a label or whether printed on the package.

(Testimony of Edward A. Bachman.)

A. There was a label on the package.

Q. Have you advertised that product in the same manner you did [131] the other products?

A. No, sir.

Q. The only advertising done for that product was in the circulars in the package and on the package.

A. And the pamphlets.

Q. Were those pamphlets or circulars circulated separately?

A. Yes, sir.

Q. They were sent out to persons writing in for the product?

A. Yes, I believe they were. On the pamphlet they advertised all these items together.

Q. And if anybody wrote in for a description of the product or for the formula, or what not, you would send them one of those circulars?

A. Pamphlets, yes, sir.

Q. And that is true of the other products, is it?

A. Yes, sir.

Q. And who were the manufacturers of that product?

A. The manufacturer is unknown to me. We bought that—it was an odd lot we bought from a man who was in the Government service. He had had it on hand and we simply bought it for distribution for him and we discontinued it before we got rid of it—as a matter of fact we junked it.

Q. Did you have any correspondence with the manufacturers of that product?

A. No, sir. [132]

Q. With respect to the product?

(Testimony of Edward A. Bachman.)

A. No, sir. The original manufacturer, as I understood it, died. It was a doctor who made it up and he passed away. That's what this man told me.

Q. Did you have any correspondence with the manufacturer of the M.D. Supercones with respect to that product?      A. Yes, sir.

Q. In that correspondence did they say whether or not they would permit you to use their name in connection with the product?

A. We had no correspondence on that subject.

Q. Did you register any one of these several products with the Oregon Board of Pharmacy?

A. Yes, sir.

Q. Which one?      A. Contra-Jel.

Q. Did you register any of the others?

A. No, sir.

Q. Did you register Medicated Douche Powder?

A. No, sir.

Q. Did you register Femeze?      A. No, sir.

Q. Did you register M.D. Supercones?

A. No, sir.

Q. Is that the only one of those products you did at any time [133] register with the Oregon Board of Pharmacy, was the Contra-Jel.

A. With one exception; that the original Supercones bought from the Norwich Company were not registered, but I made some up myself and registered with the Oregon Board of Pharmacy for one year. We weren't selling any, but we registered the name of some we made up ourselves.

(Testimony of Edward A. Bachman.)

Q. Did you have to renew that registration from year to year? A. Yes, sir.

Q. Is Contra-Jel, M.D. Supercones, Femeze and M.D. Medicated Douche Powder registered at this time for the year 1941? A. No, sir.

Q. None of them? A. No, sir.

Q. Did you apply for registration of any of these products with the Oregon Board of Pharmacy except the one year for Contra-Jel?

A. We applied for Supercones?

Q. Was that granted?

A. The ones I made up myself, yes, sir.

Q. The registration was granted?

A. Yes, sir.

Q. Now, as a matter of fact didn't the Board of Pharmacy, the Oregon Board of Pharmacy, notify you that M.D. Supercones suppository could not be registered under the law?

A. Yes, sir, those refer to the ones made by the Norwich Com- [134] pany.

Q. But subsequent to that time you had made some? A. Yes, sir.

Q. And you did submit them? A. Yes.

Q. And they were passed by the Board?

A. Yes, sir.

Q. Did the Board so notify you?

A. Yes, sir.

Q. But you applied for registration with the Board what other products?

A. None of them.

(Testimony of Edward A. Bachman.)

Q. What other of these products mentioned in the complaint?      A. None.

Q. You never applied for registration of M.D. Medicated Douche Powder?      A. No, sir.

Q. I now hand you a document and ask if you can identify that, please.

A. I think so—that's right.

Q. That is an application, is it?

A. Yes, sir.

Q. Filled out by you?      A. Yes.

Q. To the Oregon—— [135]

A. Board of Pharmacy.

Mr. Rhodes: I will offer this.

Mr. Levinson: No objection.

Trial Examiner Reeves: The document identified by the witness will be received in evidence as Commission's Exhibit 41.

(The document referred to was marked "Commission's Exhibit 41" and received in evidence.)

Q. (By Mr. Rhodes) Was this application for license of M.D. Supercones granted by the State Board?      A. No, sir.

Q. It was refused, was it?

A. Yes, sir. You are referring to the same one I just looked at?

Q. Yes.      A. Yes.

Q. So that the product M.D. Supercones was never licensed by the Oregon Board of Pharmacy.

A. With the exception of the ones I made up myself later and took down to the Board of Pharmacy

(Testimony of Edward A. Bachman.)

at Oregon State College and had it tested, which their chemist approved.

Q. And the Board then did issue a license for registration?

A. That I can't quite remember. I will have to check on that. May I make an explanation or is it all right?

Q. Yes, I think so. [136]

A. I would like to explain in connection with this, whether we offered any of these articles for registration, contraceptives are the ones offered for registration and that is the reason M.D. was never offered because M.D. is not a contraceptive and I don't claim it to be.

Q. Did you submit to the Federal Trade Commission specimen copies of the advertisements of your several products appearing in newspapers and pamphlets and on cartons in which the products were shipped?

A. I don't recall exactly what we submitted. We submitted everything they asked for.

Q. I now hand you a carton containing a tube of medicine for a medicinal preparation and ask you if you can identify that, please.

A. Yes, sir.

Q. That is the preparation sold by you?

A. Yes, sir.

Q. During the period stated.

A. Yes.

Mr. Levinson: You haven't identified that.

Q. (By Mr. Rhodes) And that advertisement



(Testimony of Edward A. Bachman.)

appearing thereon was placed thereon prior to shipment of the product.      A. Yes, sir.

Q. This is designated as Contra-Jel.

A. Yes, sir. [137]

Mr. Rhodes: I offer that.

Mr. Levinson: I think it should be identified with a number before it is offered.

Trial Examiner Reeves: The carton containing the tube may be marked for identification as Commission's Exhibit 42-A and the tube contained in the carton may be marked for identification as Commission's Exhibit 42-B.

Mr. Levinson: The respondent objects to the introduction into evidence of Federal Trade Commission's exhibits identified as 42-A and 42-B on the grounds and for the reason that the evidence indicates that these items contained in this exhibit have not been sold by the respondent prior to the institution of this complaint and therefore it is irrelevant to this hearing.

Trial Examiner Reeves: The objections are overruled and the carton marked for identification Commission's Exhibits 42-A and the tube inserted therein marked for identification 42-B are received in evidence, each taking the respective number given it for identification.

Mr. Levinson: May we ask that an exception be noted?

Trial Examiner Reeves: An exception may be noted.

(Testimony of Edward A. Bachman.)

(The carton and tube referred to were marked Commission's Exhibits 42-A and 42-B, respectively, and received in evidence.)

Mr. Rhodes: I offer now for identification, if [138] Your Honor please, a box marked Supercones.

Trial Examiner Reeves: Is it an empty carton?

Mr. Rhodes: There is something in it.

Trial Examiner Reeves: Well, the carton may be marked for identification as Commission's Exhibit 43-A and the contents may be marked for identification as Commission's 43-B

(Carton and contents referred to was marked Commission's Exhibit 43-A and 43-B, respectively.)

Q. (By Mr. Rhodes) I hand you this and ask you if you can identify the package.

A. Yes, sir.

Q. Is that a package sold by the respondent?

A. Yes, sir.

Q. And shipped as described in your testimony?

A. Yes.

Mr. Rhodes: I now offer the package and the contents in evidence, if Your Honor please.

Mr. Levinson: The respondent objects to the introduction of Federal Trade Commission Exhibits 43-A and 43-B on the ground and for the reason that said exhibits are incompetent, immaterial and irrelevant to the issues in this case, and for the further reason it appears from the testimony that

(Testimony of Edward A. Bachman.)

these particular exhibits have not been sold or distributed since the filing of the complaint or since the enactment of the law. [139]

Trial Examiner Reeves: The objection is overruled, and the carton and the contents are received in evidence as Commission's Exhibit 43-A and 43-B.

Mr. Levinson: May we note an exception?

Trial Examiner Reeves: An exception may be noted.

(Carton and contents referred to were marked Commission's Exhibit 43-A and 43-B, respectively.)

Mr. Rhodes: I now offer for identification a package, being a can labeled M.D. Medicated Douche Powder.

Trial Examiner Reeves: This may be marked for identification as Commission's Exhibit 44.

(Can referred to was marked Commission's Exhibit 44 for identification.)

Q. (By Mr. Rhodes) I will ask you to state whether or not that product in that package was sold by the respondent.

A. That's right.

Q. In the manner described in your previous testimony?

A. Yes.

Mr. Rhodes: I now offer that package, if Your Honor please, with its contents—it has a powder content as I understand it, in evidence.

The Witness: May I add that this is an old pack-

(Testimony of Edward A. Bachman.)

age and for several years there has been a trade mark package instead of this one.

Q. (By Mr. Rhodes) In what respect would the trade mark package differ from that? [140]

A. It had the markings on it U. S. Patent Office, with a number.

Mr. Levinson: Respondent has no objection to the offer into evidence.

Trial Examiner Reeves: The container and its contents are received in evidence as Commission's Exhibit 44.

(Can and contents referred to was marked "Commission's Exhibit 44" and received in evidence.)

The Witness: There was another change on the package, the name was changed to Stanley Drug Products Co. instead of Stanley Laboratories.

Q. (By Mr. Rhodes) You now operate under the name Stanley Drug Products?

A. Yes, have for some time—ever since this complaint.

Q. And the product is sold by the Stanley Drug Products Co.?

A. At the present time, yes, sir—Incorporated.

Mr. Rhodes: I now ask this package, being an envelope marked M.D. Medicated Douche Powder be received for identification.

Trial Examiner Reeves: It may be marked for identification "Commission's Exhibit 45".

(Package referred to was marked "Commission's Exhibit 45" for identification.)

(Testimony of Edward A. Bachman.)

Q. (By Mr. Rhodes) Will you state whether or not that package or similar packages were sold by the respondent in the [141] manner described in your testimony.

A. Yes, sir. Not sold—they were distributed and not sold.

Q. You distinguish between those that are sold and those that are distributed free—is that distributed for advertising purposes? A. Yes.

Mr. Levinson: The respondent has no objection to the introduction in evidence of Exhibit 45 which appears to be a sample.

Trial Examiner Reeves: The container and its contents are received in evidence as Commission's Exhibit 45.

(Container and contents referred to were marked "Commission's Exhibit 45" and received in evidence.)

Q. (By Mr. Rhodes) I now hand you a glass tube and ask if you can identify that?

A. Of course, that is a hard thing to identify. There are millions of them exactly like that that are sold to any one who wants to purchase them. It is an appliance that can be bought anywhere on the open market and it may be ours or it may not be.

Mr. Levinson: Describe it.

The Witness: This is an applicator to be connected to a tube of vaginal jelly. I couldn't identify it as ours, there are no identification marks on it.

(Testimony of Edward A. Bachman.)

Q. (By Mr. Rhodes) And the tube of jelly which you say might [142] be attached is Commission's Exhibit 42-B, is that what you refer to?

A. Yes, sir.

Q. You did in the course of conduct of your business furnish such a tube in connection with the Contra-Jel.

A. Yes, sir.

Q. As shown on Commission's Exhibit 42-A and B?

A. Yes, sir.

Q. And while you can't identify that particular tube you did furnish tubes similar in character?

A. Yes.

Q. And appearance?

A. That's right.

Mr. Rhodes: I ask that be received in evidence, if Your Honor please.

Mr. Levinson: Respondent objects to the introduction into evidence of Exhibit 46 for the same reason that respondent gave in objecting to the introduction of Exhibits 43-A and 44-A and B.

Trial Examiner Reeves: The objection is overruled and the tube is received in evidence as Commission's Exhibit 46.

Mr. Levinson: May we note an exception?

Trial Examiner Reeves: The exception will be noted. [143]

(Tube referred to was marked "Commission's Exhibit 46" and received in evidence.)

Q. (By Mr. Rhodes) I now offer for identification a package with its contents, the contents being a form of tablet and ask if you can identify that?

A. Yes.



(Testimony of Edward A. Bachman.)

Q. What is it?

A. It is a package of Femeze.

Q. Was that sold by the respondent company?

A. Yes, sir, temporarily—a short period. Yes, it was sold.

Mr. Levinson: You say it is sold?

The Witness: Not now. All of this information I am giving is what happened before 1940. We are not selling any of these items and haven't been selling them for some time—we don't even have them.

Q. (By Mr. Rhodes) Does your answer apply to all the items you have identified?

A. With the exception of M. D. Douche Powder all those items haven't been sold for over a year or a year and a half.

Mr. Rhodes: I now offer the box with its contents in evidence, if Your Honor please.

Trial Examiner Reeves: Any objection?

Mr. Levinson: The respondent will object to the introduction into evidence of Exhibit 47 on the ground and for the reason that it appears from the evidence that respondent [144] is not engaged in the sale and distribution of said product and therefore the exhibit is incompetent and immaterial and irrelevant to the issues in this case.

Trial Examiner Reeves: The objection is overruled and the carton will be received in evidence as Commission's Exhibit 47-A and its contents will be received in evidence as Commission's Exhibit 47-B.

(Testimony of Edward A. Bachman.)

Mr. Levinson: May I note an exception?

Trial Examiner Reeves: An exception is noted.

(Carton and contents referred to were marked "Commission's Exhibit 47-A" and "Commission's Exhibit 47-B.")

Q. (By Mr. Rhodes) Referring to Commission's Exhibit 46 being a glass tube, what would you describe that as in your literature?

A. A nozzle or applicator.

Q. The exhibits you have identified beginning with 42-A and running to and including 47 are exhibits, or exhibits similar thereto, that were furnished by you to the Federal Trade Commission, were they not? A. Yes, sir.

Q. I hand you copy of page 17 taken from the Oregon Daily Journal, Portland, Oregon, for April 20, 1938, and direct your attention to an advertisement in the lower left hand corner and ask if you can identify that as an advertisement inserted by the respondent. [145] A. Yes.

Q. I call your attention to the Daily Olympian, Olympia, Washington, dated March 23, 1938, and direct your attention to an advertisement appearing in the lower left hand corner and ask if you can identify that? A. Yes.

Q. The advertisement referred to is marked "M.D." Medicated Douche Power for Feminine Hygiene", is that right? A. Yes.

Q. And the advertisement referred to in the previous exhibit, Exhibit 32, is marked "M.D. for Feminine Hygiene", is that true? A. Yes.

(Testimony of Edward A. Bachman.)

Q. I now direct your attention to advertisement appearing on page 5 of the Daily Olympian of Olympia, Washington, and direct your attention to an advertisement captioned "M.D. Medicated Douche Powder" and ask if you can identify that?

A. Yes, sir.

Q. Are those advertisements all advertisements that were inserted by the respondent?

A. No, by the Advertising Agency.

Q. For the respondent? A. Yes, sir.

Q. I now direct your attention to the issue of March 23, 1938, of the Register Guard of Eugene, Oregon, and direct your [146] attention to an advertisement captioned "To Keep Dainty and Sweet" with the letters "M. D. for Feminine Hygiene". Was that inserted by the respondent?

A. Yes, sir.

Q. I now hand you page 6 of the Seattle Post-Intelligencer for Wednesday, May 6, 1936, and direct your attention to an advertisement appearing thereon, in the left hand corner of the page, and ask if you can identify that?

A. Yes, sir.

Q. It is captioned "M.D. for Feminine Hygiene". Was that inserted by the respondent?

A. Yes, sir; the respondent advertising agency.

Q. For the respondent?

A. For the respondent, yes, sir.

Mr. Rhodes: I now offer for identification, if Your Honor please, a leaflet and ask that it be marked.

(Testimony of Edward A. Bachman.)

Trial Examiner Reeves: It will be marked for identification Commission's Exhibit 48.

(The leaflet referred to was marked "Commission's Exhibit 48" for identification.)

Q. (By Mr. Rhodes) A leaflet advertising Femeze, and ask if you can identify that, Mr. Bachman? A. No, sir.

Q. I will ask you if that is not a leaflet that was furnished by you to the Federal Trade Commission? [147] A. I don't think so.

Q. I will ask you if that is not a leaflet that is inserted in the package of Femeze when sold and shipped by the respondent? A. No, sir.

Mr. Rhodes: I now offer for identification, if Your Honor please, a folder, or rather a pasteboard carton labeled "Femeze" among other things.

Trial Examiner Reeves: It may be marked for identification Commission's No. 49.

(Carton referred to was marked "Commission's Exhibit 49" for identification.)

Q. (By Mr. Rhodes) I will ask if you can identify that? A. No, sir.

Q. I will ask you if that is not the carton in which was contained some pellets or a product described by the printed matter appearing thereon?

A. What was the question?

Mr. Rhodes: Repeat the question.

(Last question read by reporter.)

Mr. Rhodes: That was sold by the respondent.

A. No, sir, I can't tell that.

(Testimony of Edward A. Bachman.)

Q. I will ask you whether or not you furnished that carton, together with those contents to the Federal Trade Commission?

A. I furnished a carton. I wouldn't say this carton. [148]

Q. Similar to this? A. Yes.

Q. With the same printed matter on it. There is a difference in the printed matter on the inside.

Mr. Rhodes: I now offer for identification, if Your Honor please, a letter dated September 12, 1938, signed Stanley Laboratories, Inc., by E. A. Bachman.

Trial Examiner Reeves: It may be marked for identification Commission's Exhibit 50.

(Letter referred to was marked "Commission's Exhibit 50" for identification.)

Q. (By Mr. Rhodes) I will ask you to state whether or not you can identify that letter, please.

A. Yes, sir.

Q. Did you write it?

A. It was written under my instructions.

Q. Did you sign it?

A. That is not my signature.

Q. Was any one authorized to sign that letter for you? A. Yes, sir.

Q. Will you read into the record the three lines——

A. (Reading) "In compliance with your request of September 7 we are today mailing you under separate cover three samples of 'Femeze'".

(Testimony of Edward A. Bachman.)

Q. I now ask you, since you have refreshed your memory by [149] reading this, whether or not you furnished the carton which is offered to you for identification as Commission's Exhibit 49, and the leaflet identified as Commission's Exhibit 48, if you submitted those to the Federal Trade Commission? A. I can't say that I did.

Mr. Levinson: Just a moment, I want to object to the form of the question unless counsel for the Federal Trade Commission will also offer the letter of the Commission to which this is an answer.

Mr. Rhodes: The letter is in the possession of the respondent, if Your Honor please.

Trial Examiner Reeves: Off the record.

(Discussion off the record.)

Trial Examiner Reeves: On the record. Do you desire to examine the witness?

Mr. Levinson: Yes, I would like at this time to interrogate the witness with reference to Exhibit No. 50.

Trial Examiner Reeves: You may proceed.

Q. (By Mr. Levinson) Mr. Bachman, I am calling your attention to Exhibit No. 50 which is an original letter dated September 12, 1938 on the letterhead of Stanley Laboratories, addressed to Mr. James A. Horton, Chief Examiner Federal Trade Commission, Washington, and the contents of the letter has to do with mailing under separate cover three samples of Femeze. Now I am handing you this exhibit and ask you if you know



(Testimony of Edward A. Bachman.)

what the [150] content of the letter was that you received from the Federal Trade Commission to which Exhibit 50 is the response?

A. As I recall it we carried on correspondence with the Federal Trade Commission for quite some time and we have always tried to comply with all their requests and among their requests was one that we send them samples of products we distributed after we had named the items. The first letter previous to this one, they asked what we distributed and we named these items and when they asked us to send them some samples we sent them some samples. It may be we picked the samples off the very first delivery these people made before we substituted the pamphlets, but we took the pamphlets out and procured new ones with the Stanley Laboratories' name on them. That is the ones we shipped in interstate commerce. Before we distributed any in interstate commerce we put in a pamphlet, generally a copy of this, except we changed the name.

Q. Do I understand Exhibit 50 is just part of a series of correspondence?

A. That's right.

Mr. Levinson: I believe that is all.

Trial Examiner Reeves: As I recall you were offering in evidence the documents marked for identification 48 and 49.

Mr. Rhodes: And 50—the letter. [151]

Trial Examiner Reeves: Are there any objections? The articles and documents marked for

(Testimony of Edward A. Bachman.)

identification as Commission's Exhibit 48, 49 and 50 are now received in evidence, each taking the respective number given it for identification.

Mr. Levinson: The respondent is objecting to the introduction into evidence as products of the respondent Exhibits 47, 48 and 49, on the ground and for the reason that the same are incompetent, immaterial and irrelevant.

Trial Examiner Reeves: The objections are overruled.

Mr. Levinson: May we note an exception?

Trial Examiner Reeves: An exception is noted.

(The articles and documents referred to were marked "Commission's Exhibit 48", "Commission's Exhibit 49", and "Commission's Exhibit 50", and received in evidence.)

Q. (By Mr. Rhodes): Upon receipt of the Federal Trade Commission's letter of September 7, as indicated by your letter of September 12, 1938, you did comply with the request and submit three samples of Femeze in the original carton in which they were sold. A. Sold how?

Q. As you have described heretofore in your testimony. A. No, not that way. [152]

Trial Examiner Reeves: Off the record.

(Discussion off the record.)

Q. (By Mr. Rhodes): Is this Stanley Laboratories a closed corporation?

A. It was a closed corporation. Stanley Laboratories is out of existence.

(Testimony of Edward A. Bachman.)

Q. Are you operating under a corporate name at this time?      A. Yes, sir.

Q. And what is the corporate name?

A. Stanley Drug Products, Inc.

Q. Is that a closed corporation?      A. Yes.

Q. Who owns the stock?

A. Edward A. Bachman and William J. Ward and Mrs. A. J. Bachman.

Q. There is none sold on the open market?

A. No.

Q. You manage and control and direct the affairs of the corporation?

A. I was at that time. I am in the Army now and have been for three months, and I am not active at all.

Q. And it is owned and operated chiefly by you and your wife?      A. No, sir; 50 per cent.

Q. You own 50 per cent?

A. My wife and I together have 50 per cent.

[153]

Q. Who owns the rest?

A. William J. Ward.

Q. Prior to the organization of the new company you owned a controlling majority of the stock in the corporation?

A. No, sir, 50 per cent, never controlled it.

Q. Did you direct affairs of the corporation?

A. Just from the office standpoint. As a matter of fact, the sales and the distribution was handled by my partner William J. Ward. I handled the office.

(Testimony of Edward A. Bachman.)

Q. But it was largely under your control and direction.

A. No control—I had 50 per cent. At no time have I had more than 50 per cent.

Q. Well, were the other stockholders permitted to do anything they choosed with it?

A. I didn't get that question.

Q. Were the other stockholders permitted to do anything they pleased with the management, run it in any manner they saw fit, or did you have some voice in it? A. I had 50 per cent of voice.

Q. I will hand you the exhibits that have been offered in evidence in this case, beginning with Commission's Exhibit 7 and running through to Commission's Exhibit 31, inclusive, and ask you to identify those if you can and state for the record with respect to each when it was used in the business conducted by the respondent. [154]

Trial Examiner Reeves: Mention the number in each case, please.

A. No. 7—

Trial Examiner Reeves: State what it is, please.

A. It is a carton from Contra-Jel.

Mr. Levinson: That is supposed to be 42-A—you are getting them confused.

Mr. Rhodes: I am not getting them confused. I am trying to get him to identify these.

Trial Examiner Reeves: There is probably a duplicate there.

Mr. Rhodes: It might or might not be a duplicate of those we introduced this morning.

(Testimony of Edward A. Bachman.)

A. Yes, it is a duplicate. That is exactly a duplicate of the carton of Contra-Jel. We have never had any other kind that has been sold during the years of '33 to about '38, the middle of '38.

Trial Examiner Reeves: Go to the next, please.

A. This is a pamphlet.

Trial Examiner Reeves: What is the number—8?

A. No. 8-A-B—Exhibit 8—this pamphlet is describing the uses for M. D. Medicated Douche Powder.

Trial Examiner Reeves: What use is made of it, what distribution?

A. It was used as an insert in the can of M.D. and was also [155] used as an advertising medium in reply to inquiries.

Trial Examiner Reeves: Take the next, please.

A. This is, Exhibit No. 9, a pamphlet describing the uses for Femeze.

Trial Examiner Reeves: What use of distribution was made of that?

A. This was used as an insert in the package of Femeze by the man who sold me the merchandize. I got it with this pamphlet in it.

Exhibit 10 is an insert in the package of Contra-Jel with directions for use which was used for that purpose.

Exhibit 12 is a broadside used when M.D. was first introduced on the market, designed by the advertising agency, using pictures of nurses and doc-

(Testimony of Edward A. Bachman.)

tors which were leased from the Underwood & Underwood people.

Q. Was that used by the respondent in advertising the product?

A. Yes, used by us as an advertising feature.

This again is the same ad as the broadside——

Q. (By Mr. Rhodes): What are you referring to? A. Exhibit 13 are duplicates——

Q. 15 is it not?

A. 15 is the exhibit number. These are three advertisements of M. D. Medicated Douche Powder which are duplicates of the broadside used by us for newspaper advertising.

Exhibit 16 is two advertisements with pictures of [156] women advertising M. D. Douche Powder which are also copies of the broadside used in newspaper advertising.

Exhibit 17 is three advertisements featuring M. D. Douche Powder used by us in advertising in newspapers.

Q. Are these advertisements used in newspapers, or are the exhibits just referred to, 15, 16 and 17, circulars? A. Newspapers.

Q. Wholly in newspapers?

A. Wholly in newspapers—no other purpose.

Q. Will you describe Commission's Exhibit 18.

A. Exhibit 18 is a copy of the formula for M.D. Medicated Douche Powder which we sent to the Commission.

Q. And Exhibit 19?



(Testimony of Edward A. Bachman.)

A. Exhibit 19 is a reply in compliance with the request by the Federal Trade Commission for the formulas of M. D. Medicated Douche Powder, and also Contra-Jel, also stating that the formula of Femeze is not known to us, since these were distributed by Mr. Clark of Salem, Oregon previous to our purchase. Also that the M.D. Supercones were made for us by the Norwich Pharmaceutical Company, that they have the formula and that they are not making those any more as of the date June 22, 1938.

Exhibit 25-A is a pamphlet or a duplicate of Exhibit No. 8 used for the same purpose.

Exhibit 26-A is a pamphlet used by us for advertising- [157] ing M. D. Medicated Douche Powder and Contra-Jel.

Exhibit 27-A is an insert that was used by us in advertising the M.D. Medicated Douche Powder containing a coupon applicable on the purchase of Contra-Jel.

Exhibit 28 is a coupon used as an insert advertising M.D. Medicated Douche Powder.

Exhibit 29 is an insert advertising Supercones—M.D. Supercones.

Exhibit 30 is a pamphlet on Femeze which I identify as our own, signed by Stanley Laboratories, of Portland, Oregon. That is what I had reference to. That is the reason I couldn't identify the others. Used as an insert in a package of Femeze.

Exhibit 31 is a piece of advertising, advertising

(Testimony of Edward A. Bachman.)

M. D. Medicated Douche Powder used as an insert to the trade, to the drug trade.

Q. All of those exhibits which you have previously identified were used by the respondent in their business at some time during the course of their business. A. Yes, sir.

Q. Mr. Bachman, were you interviewed sometime in December, 1938 by Mr. White of the Federal Trade Commission?

A. I recall that such was the case. I don't recall the exact date.

Q. He visited your place, did he not? [158]

A. Yes, sir.

Q. And at that time did you or did you not state to him that the only laboratory equipment and the only experts of the Stanley Laboratories was such as were made known to him at that time.

A. I would like to know what was made known to him at that time.

Q. Did you then state that you did not have any laboratory equipment? A. I don't believe so.

Q. Did you ever state to Mr. White that you did not conduct a laboratory?

A. That would be true.

Q. As a matter of fact it is true that you neither have nor had a laboratory equipped for compounding medicinal preparations.

A. That is not true. I have a laboratory for compounding medicinal preparations, but not a laboratory in the sense the Federal Trade interprets it now.

(Testimony of Edward A. Bachman.)

Q. Will you state what equipment you had in your laboratory at that time that Mr. White interviewed you.

A. We had all of the utensils and equipment necessary for compounding U.S.B. & N. F. preparations. We had our scales, our metric and avoirdupois weights, our mortars and pestles. We had our mixers and we also had a tube filling machine and a [159] tube closing machine.

Q. And you had experts?

A. We had technicians, and a registered pharmacist in charge.

Q. Did you or did you not have experts qualified to conduct experiments, and compound such medicinal preparations?

A. What do you mean by experiments?

Q. Well, would a person with the education of, or whose vocation was a ditch digger be qualified to do that work?

A. Well to answer that I would say we did have experts qualified to do that.

Q. What were their qualifications?

A. Registered pharmacists, and manufacturing pharmacists.

Q. And you had those at that time that Mr. White interviewed you?

A. Yes, sir.

Q. And you made that known to Mr. White at that time?

A. I cannot recall that, what questions he asked or what answers I gave. As a matter of fact, Mr. White called on me twice. He called on me once

(Testimony of Edward A. Bachman.)

approximately in 1936 or 1937. Now I don't know what was said then and I can't recall what was said in the subsequent visit.

Q. Well, he did call on you on two occasions?

A. Yes, sir.

Q. And he did discuss with you the equipment of your laboratory and whether or not you had a laboratory. [160]

A. Well, I don't recall the exact conversation. I remember this, that he wrote down everything I said so you ought to have it there. That would refresh my memory.

Q. Whatever Mr. White wrote down at that time is in substance what the conversation related to and what it was. A. If I signed it.

Q. And if you didn't sign it?

A. I wouldn't know.

Q. You wouldn't deny it?

A. I wouldn't deny it if it was true and if it was something that wasn't true I would have to deny it. I remember the question about the equipment, not from Mr. White, but it came from Mr. Horton, of the Federal Trade Commission, and we have a copy of the letter we sent him back identifying all the items used in manufacturing.

Q. Did or did not Mr. White interview you on March 16, 1937?

A. I don't know the date, but Mr. White did interview me.

Q. He interviewed you on two occasions, one was prior to 1938 and the other was in 1938.

(Testimony of Edward A. Bachman.)

A. 1937.

Q. In response to the inquiry propounded by Mr. White "Where is the laboratory located" Mr. White reports that you said it was located in the drug store. A. At that time that was true.

Q. Mr. White then reports that he asked to be shown the [161] laboratory and you replied, as reported by Mr. White "Well, it is just where you are." And you were then standing at the cigar counter.

A. Mr. White is very wrong. I think a person of any average intelligence wouldn't make that kind of a remark, and I assume I would not make such a remark.

Q. In reply to the question whether you had a laboratory or not Mr. White reports that you stated no, you didn't have.

A. I cannot recall such an answer.

Q. In reply to the question "How many employees"—this question was asked prior to the question as to whether you had a laboratory or not—as to how many employees were employed in the laboratory Mr. White reports that you stated that there were none. Is that true or not?

A. What year is this report?

Q. 1937, March 16.

A. That is not true, because we had a salesman—at least that much—someone had to sell it.

Q. Mr. White asked you then further with respect to the number of employees, and who they were and you stated "Those who work at the cigar

(Testimony of Edward A. Bachman.)

counter, at the food counter, and who wait on the drug trade are the persons who run the laboratory.”

A. Why would it be necessary for me to answer that question if my reply to the question regarding the number of employees [162] I had was none.

Mr. Rhodes: These questions were asked prior to the other questions. I thought I prefaced my question with that statement.

Mr. Levinson: I would like to note an objection to this line of inquiry, if the Court please, on the ground and for the reason that all this conversation alleged to have been had between the witness and Mr. White was in the year 1937, which would be prior to the amendment to the Federal Trade Commission law, and therefore any conversation on any matters relating to any purported violations of any law would be before there was such a law and therefore it would be incompetent, immaterial, and irrelevant and I therefore ask that all this testimony be stricken out for that very reason.

Trial Examiner Reeves: The motion will be denied.

Mr. Levinson: May we note an exception.

Trial Examiner Reeves: An exception will be noted.

The Witness: Will you read that question again?

(Last question read by Reporter.)

Q. (By Mr. Rhodes): What is your answer to that question?

A. I think a person's pride as a pharmacist



(Testimony of Edward A. Bachman.)

wouldn't permit him to answer such a thing as written down on that paper there.

Q. Do you answer it or do you decline to answer it? [163]

A. I answer that it is untrue.

Q. Mr. White reports that he further asked you during the course of the conversation whether you had a microscope or a sterilizing equipment of any kind and you answered no.

A. That is true, whether he asked it or not, that is true. Why is it necessary to have that in manufacturing mixed powder? [164]

Q. (By Mr. Rhodes): Further with respect to your conversations with Mr. White at the time he interviewed you in March, 1937 Mr. White states he asked you why you used the name Stanley Laboratories, and states that you said that you used the name Stanley Laboratories because you wanted the public to draw the conclusion that your products were manufactured in a laboratory, is that true or not?

A. No, sir. May I explain why the name is used?

Q. Yes.

A. The name Stanley Laboratories is derived from my son's name, Stanley, and I used it because I thought in the future perhaps the business would build up to where he could take it over.

Q. Why did you use the word laboratories?

A. Because at that time it was the accepted term used by anyone manufacturing or distributing drug

(Testimony of Edward A. Bachman.)

products. We simply used it because there were so many items similar to that that used laboratories that we used it without considering whether it was irregular or not. This was in 1937. Previous to the manufacture of this powder we used the name Stanley long before that. We used that away back in 1933 when we originally [165] put out Contra-Jell and before that we used it for preparations we made up in the drug store. We called those Stanley. This same M.D. Douche Powder was called Stanley Powder before we put it in this can. We used to make it in the drug store there.

Q. That was before you used the letters M. D.

A. Yes, sir, that's right. We called it Stanley Laboratories.

Q. How did you come to use the letters "M.D." in connection with this preparation?

A. Well, sir, I had a lot of experience in manufacturing, preparing and compounding things, and when I came to the powder, I originally called it Stanley's Douche Powder, and we had Post-Office Pharmacy on it, which was the name of the drug store, then when the sales became so big in the store, and we felt we had a good article and that it had the approval of the public, we began to seek some catchy name for the sale of the article. Medicated Douche Powder, beginning with M. D.—it is an abbreviation of medicated douche—we simply named it M. D., then followed it with Medicated Douche, explaining the M. D. It was

(Testimony of Edward A. Bachman.)

brief and catchy and besides that we had heard of that name before on some other products.

Q. Did you state to Mr. White in that conversation that the letters M.D. were used because they would lead the public to believe that it was medicated?

A. Not that way. I explained exactly as I explained to you, sir, [166] that M. D. were abbreviations for Medicated Douche. If you interpret it that way I would say yes.

Q. Why was the picture of a nurse used in connection with it?

A. That was something, being in the drug business as long as I had, I had seen many articles that people were purchasing. There were other articles with pictures of nurses. It was catchy and a way to identify it.

Q. Did you state to Mr. White at that time you used it because it would convey the impression the product had been endorsed by the Medical Association?      A. No, sir.

Q. You deny that you made such a statement?

A. I deny it.

Mr. Rhodes: That is all the questions I have of this witness at this time.

Trial Examiner Reeves: You may cross-examine.

#### Cross Examination

By Mr. Levinson:

Q. Mr. Bachman, what is your occupation in civil life?      A. Druggist.

(Testimony of Edward A. Bachman.)

Q. Will you state your qualifications for being a druggist?

A. Well, I graduated from college.

Q. What college?

A. North Pacific College of Oregon, degree of Ph. D.

Q. What year? [167]

A. 1922, and since that time and before that time I was working in drug stores and owned my own store beginning with 1925 until the present day. During my practice of pharmacy I had many occasions to prepare and compound combinations for people who felt that they were good enough articles, that they encouraged me to try to make them up for sale purposes, and also during the time that I was a practicing pharmacist I had the good fortune of being elected president of the Portland Retail Druggists' Association, and later the state president. I also belong and have belonged to the National Association of Retail Druggists, and held membership in the American Pharmaceutical Association, reading and receiving all their literature and advanced studies in pharmacy and I take pride in saying that I am up to date as far as pharmacy is concerned.

Q. You were called into active service by the Government?

A. Yes, sir, I have been in the Reserves in the Army for the last eleven and one-half years and in this emergency they called me in for service in the hospital.

(Testimony of Edward A. Bachman.)

Q. What is your occupation in the hospital?

A. I am a First Lieutenant, hold the rank of First Lieutenant, in charge of the hospital funds and in charge of the post exchange funds and supervisor of the pharmacy.

Q. You are located where?

A. Barnes General Hospital, Vancouver, Washington. [168]

Q. Calling your attention to this particular product which is known in the record as M.D. Medicated Douche Powder please tell us when you first manufactured and distributed that powder.

A. Under the name M.D.?

Q. M.D.

A. Under the name M. D. we first began to distribute it in February of 1936. We made it before that under the name of Stanley's Douche Powder.

Q. Whose formula is that?

A. That is our own—my own—originally the formula was given to me by a brother who is a physician in Detroit, and being in close touch with him he would quite often send me some favorite formula of his. This one appealed to me particularly because of it being every one of the things said about it, mildly antiseptic and cooling and refreshing, and all the things we have said about it, and I added another ingredient, which through reputable books has been recognized as a very effective antiseptic, and that is Oxyquinolin Sulphate, and by adding that to his formula I felt I had

(Testimony of Edward A. Bachman.)

something worth while and I discussed it with many people and with physicians, so finally I decided to put it on the market because of the insistence of a lot of my customers.

Q. Could you tell us for the record what this formula is?

A. Yes—you mean the ingredients themselves?

[169]

Trial Examiner Reeves: Off the record.

(Discussion off the record. )

Trial Examiner Reeves: On the record.

The Witness: It is on the label.

Q. (By Mr. Levinson): Where is this medicated douche powder compounded?

A. At the present time, or when this question came up——

Q. No, in the last few years.

A. In the McKesson & Robbins Laboratory.

Q. That is a branch of McKesson & Robbins that have laboratories throughout the United States?

A. Yes, they have a very complete manufacturing plant where they manufacture many household necessities, remedies, and special formulas, under what is called a private label. This would be called a private label. They manufacture it for us, because we felt it was less expensive to have them do it, than going to the expense of buying the necessary machinery.

Q. You furnished them with the formula and they compounded it for you?

A. That's right. And at one time they were



(Testimony of Edward A. Bachman.)

packaging it also. When this took place McKesson used to package the entire product and supply it to us, until the new Pure Food & Drug Act Amendments took effect, then they manufactured the powder for us, shipped it to our company, and we employed people to package that powder into these cans and insert the literature [170] and distribute it.

Q. Do you also compound this in your drug store without using the package?

A. Well, of course in the past we packaged goods because it is more convenient, but for quite some time, when McKesson used to make it up over there, before they made it up, we had prescriptions, or quite often without any prescriptions we would make it up for people in the store. That is the way we started to sell it. We used to put it up in glass jars before we called it M. D., in our store.

Q. You say you would receive prescriptions from doctors. What would be the nature of the prescriptions?

A. Well, the prescriptions were this way. The doctors would come in and we would mention the fact we were putting up this douche powder. It is a very common practice for the physician to simply put down "Antiseptic powder for douche," because as a rule all these formulas are rather lengthy and they don't like to sit down and write out what they call shot-gun prescriptions, or eight or nine ingredients, because they don't remember the quantities very well, or they might forget some-

(Testimony of Edward A. Bachman.)

thing, and quite often they write "Antiseptic powder" and we understand this is what they want, and give them this powder.

Q. In other words, doctors have discussed this particular product? [171]

A. That's right.

Q. And had recommended its use?

A. Yes. We also had left samples occasionally with doctors we felt would be inclined to prescribe it and they would use the samples possibly in their office and people would go in and ask for a can of M. D. They very seldom write out the whole prescription. That is the general rule for any of these douche powders, and there is one quite big seller in the state and the doctors will say this—or name it by name—and you say "How did you happen to ask for it", and they will say, "Well, the doctor said so."

Q. Mr. Bachman, I am handing you what purports to be a printed statement issued by the United States Patent Office, registered April 4, 1939, trade-mark 366203, and registered October 5, 1938, trade-mark 361632, and ask you to look at these two exhibits, and tell us what they are.

A. This is the first trade-mark we got because of the design, and after we heard from the Federal Trade Commission and they didn't like the cross in there and the design in general we thought we would modify it perhaps to gain the favor of the Commission, and we changed it over to this and had this for a trade-mark. This has no cross on it.

(Testimony of Edward A. Bachman.)

Mr. Levinson: I would like to offer into evidence the two exhibits and have them identified by some number. [172]

Mr. Rhodes: May I inquire what the purpose is in offering these?

Mr. Levinson: The purpose is to show that the letters M. D. were not held out to the public as meaning medical doctor, but this is a trade-mark or trade name for the particular product as recognized by the Patent and Trade-mark Office of the United States Government.

Mr. Rhodes: I object to the introduction in evidence of the exhibits, if the purpose is as stated by counsel for the respondent, for the reason that if they are accepted they must be accepted for whatever they can be purported to be worth and not for the purpose of establishing the fact that M. D. does not represent medical doctor.

Mr. Levinson: I will make that additional suggestion in this offer.

Trial Examiner Reeves: Your objections?

Mr. Rhodes: I was offering my objection in my statement.

Trial Examiner Reeves: Well, later counsel qualified his offer.

Mr. Rhodes: I further object to it for the purpose of establishing any fact at issue in the case with the Federal Trade Commission against the respondent.

Trial Examiner Reeves: The objection is overruled and the document identified as trade-mark 361-

(Testimony of Edward A. Bachman.)

632 is received [173] in evidence as Respondent's Exhibit No. 1.

Mr. Rhodes: Note my exception.

(The trade-mark referred to was marked "Respondent's Exhibit 1", and received in evidence.)

# UNITED STATES PATENT OFFICE

Stanley Laboratories, Inc., Portland, Oreg.

Act of February 20, 1905

Application June 6, 1938, Serial No. 407,162



## STATEMENT

To the Commissioner of Patents:

Stanley Laboratories, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business in the city of Portland, Oregon, and doing business at 439 Northwest Broadway in said city and State, has adopted and used the trade-mark shown in the accompanying drawing, for SANITARY NAPKINS, in Class 44, Dental, medical, and surgical appliances, and presents herewith five (5) specimens showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905, as amended.

The trade-mark has been continuously used on and applied to said goods in applicant's business, or its predecessor's business, since on or about the 15th day of October, 1935.

The trade-mark is applied or affixed to the goods or to the packages containing the same by means of a label or wrapper bearing the mark

or by imprinting or impressing said mark thereon, or the mark may be applied in divers other ways to the goods or to the package containing the same.

The drawing is lined to indicate the colors sky blue, navy blue, and cream and the unshaded portion indicates white. The facial representation as a feature of the mark is fanciful.

The undersigned hereby appoints Samuel S. Jacobson (registration No. 13,157) of 810 Yeon Building, Portland, Oregon, its attorney, with full power of substitution and revocation, to prosecute this application and make all such alterations and amendments therein as may be required, to sign the drawing, to receive the certificate, when issued, and to transact all business in the United States Patent Office connected therewith.

STANLEY LABORATORIES, INC.,  
By E. A. BACHMAN,  
President.

## FEDERAL TRADE COMMISSION

Docket No. 4130 ~~COMMISSIONER'S~~ Exhibit No. 1  
RESPONDENT'S  
IN THE MATTER OF Stanley Laboratories  
DATE 6/26/41 WITNESS Bachman  
REPORTER Boylan





(Testimony of Edward A. Bachman.)

Trial Examiner Reeves: And the document designated as trade-mark 366203 is received in evidence as Respondent's Exhibit No. 2.

Mr. Rhodes: My exception applies.

Trial Examiner Reeves: Your exception may be noted.

(The trade-mark referred to was marked "Respondent's Exhibit 2", and received in evidence.)



4130

2

Stanley Labs.

H. A. Bachman

H. W. Boylan

# UNITED STATES PATENT OFFICE

Stanley Laboratories, Incorporated, Portland,  
Oreg.

Act of February 20, 1905

Application October 10, 1938, Serial No. 411,471



## STATEMENT

### To the Commissioner of Patents:

Stanley Laboratories, Incorporated, a corporation duly organized under the laws of the State of Oregon and located at Portland, Oregon, and doing business at 432 Northwest Broadway, Portland, Oregon, has adopted and used the trade-mark shown in the accompanying drawing, for FEMININE HYGIENE PRODUCT—NAMELY, A MEDICATED DOUCHE POWDER—in Class 6, Chemicals, medicines, and pharmaceutical preparations.

The trade-mark has been continuously used and applied to said goods in applicant's business since on or about the 5th day of July, 1938.

The applicant presents herewith five specimens and a drawing showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act

of February 20, 1905. The trade-mark is applied or affixed to the goods or to the packages containing the same by means of a label, or wrapper bearing the mark or by printing or impressing said mark thereon, or the mark may be applied in diverse other ways. The portrait appearing in the drawing of the trade-mark is fanciful.

The undersigned hereby appoints James J. Hayden, Esquire, of 737 Woodward Building, Washington, D. C., his attorney, to prosecute this application for registration, with full powers of substitution and revocation, and to make alterations and amendments therein, to receive the certificate, and to transact all business in the Patent Office connected therewith.

STANLEY LABORATORIES

INCORPORATED,

By EDWARD A. BACHMAN,

President.



(Testimony of Edward A. Bachman.)

Q. (By Mr. Levinson): Mr. Bachman, calling your attention to the Federal Trade Commission's exhibits, and particularly the one that is numbered Commission's Exhibit 44, and calling your attention to the letters "M" divided by a cross and a nurse, then "D", will you tell us the purpose that you had in using those particular letters?

A. Well, the purpose is as I explained before, they are abbreviations for Medicated Douche, and also it was euphonic in sound and made it more easily remembered.

Q. Has any customer ever come into the store or come into your place of business or has anyone ever asked you whether or not M. D. was a product made by doctors?

A. The only place I saw that was in the first copy of the stipulation, the first mention I had of any doctors. [174]

Q. What stipulation?

A. The complaint, the Federal Trade Commission made a complaint to us on what they felt about it.

Q. Have you ever received any complaint from any person, whether a customer or otherwise, to the effect that M. D. on the can indicated that it was a product endorsed by the medical profession?

A. We had no such complaints.

Q. Can you tell us approximately how much of this medicated douche powder you manufacture or distribute year by year?

(Testimony of Edward A. Bachman.)

A. Naturally we are selling more now than we did when we started. Do you want total sales per year now?

Q. Let us take from the year 1938 up to the present time.

A. In numbers of cans, or dollars and cents?

Q. I would suggest—well, in dollars and cents might be all right.

A. About ten or twelve thousand dollars a year.

Q. That has been a consistent average the last few years?

A. That would average pretty well for the entire period. We are selling more than that at present and less than that before 1938.

Q. Now in the operation of your drug store do you wait upon the trade too?

A. Yes; on many occasions I would wait on the trade. [175]

Q. Will you tell us whether or not customers would come in and ask for this product by its trade name?      A. Quite often.

Q. Are there various kinds of this product manufactured under other names?      A. Yes, sir.

Q. Will you state, for the purpose of the record, the names of some of the douche powders that are distributed here in our state.

A. One of them is Takara, a very popular seller; another one is Sharpe & Dohm's Bocaral.

Q. Now, when a customer would come into the store——



(Testimony of Edward A. Bachman.)

A. I would like to add another name to that. McKesson & Robbins puts out one called U-M.

Q. When a customer comes into the store and they ask for an antiseptic powder, what is generally the inquiry made?

A. Well, you mean the woman customer?

Q. Yes, a woman customer.

A. Well, it is just like buying sanitary napkins, or anything in the feminine hygiene line, they are a little shy and it is an advantage to be able to name something quickly, either say "Takara" or "M.D." or "Bocaral". That is as far as they will go. They want to get out of there as quick as they can.

Q. In other words, the purchase of this particular product [176] is generally accompanied by some embarrassment?

A. Yes.

Q. And they like to have some quick trade-name to ask for.

A. Quick identification.

Q. Now in the sale of this product which is called Medicated Douche Powder, what representations are made to the public as to its value or use that you know of, what particular recommendations, if any?

A. Well, we put it this way, we sell it to the trade as a mildly antiseptic cleansing and cooling preparation for women to be used as a vaginal douche and also to be used as a foot wash, as a gargle, or where any preparation is indicated that needs to be mildly antiseptic and cooling and soothing.

(Testimony of Edward A. Bachman.)

Q. Have you in the sale of this product sold any of it to any institutions?

A. Yes, we have. We sold it to a clinic—started to sell them as far back as three years ago. At Vancouver, Washington they have a doctors' clinic up there, and they wrote in and made inquiries and made investigations, and bought it.

Q. Are there any other clinics or institutions?

A. Well, not that I know of.

Q. Now, with reference to the sale of Contra-Jel and Femeze, when was that discontinued in interstate commerce?

A. Just as soon as we heard from the Federal Trade, which [177] was about in 1938. Contra-Jel I think was discontinued even before that.

Q. Do you know about the approximate date?

A. I would say 1938 to be safe. I will say May, 1938.

Q. Are you now distributing either of those products? A. No, sir.

Q. And are you adhering to the stipulation you entered into with the Federal Trade Commission?

A. Yes, sir.

Q. Now, with reference to the use of a picture of a doctor, or of a nurse in the advertising of this particular product, is that condition now existing?

A. No, sir, we discontinued it also in our stipulation. We haven't used that since our last contract that we have with the newspaper. Back in May of 1938 was the last contract, and I think the last piece of advertising that had that objectionable

(Testimony of Edward A. Bachman.)

advertising ended in October, 1938, and we haven't had any since.

Q. Where did you get the idea of the picture of the nurse—the doctor?

Mr. Rhodes: I object to that, if your Honor please. It doesn't make any difference where he got the idea.

Mr. Levinson: I will reframe the question.

Q. (By Mr. Levinson) Is it not a fact that in the sale of medicinal preparations, patent medicines and the like, it has [178] been the practice of the trade to have a picture of a girl dressed like a nurse or a man with a goatee or something that might look like a doctor?

A. It is so much the practice I think I mentioned in earlier testimony that people like Underwood & Underwood who supply advertising agencies with pictures supply those and recommend that it would be a good sales point, and our advertising agency got the thing together, and we assumed it was all right.

Q. Can you tell us whether or not there exists now, or has existed for many years last past, advertisements of various kinds which have pictures of doctors and nurses?

Mr. Rhodes: I object to that question, if your Honor please. It doesn't make any difference how other people advertise their products.

Trial Examiner Reeves: The objection is sustained.

Mr. Levinson: We will note an exception. Shall

(Testimony of Edward A. Bachman.)

we make an offer of proof? Is that the practice before the Commission?

Trial Examiner Reeves: That has been done at hearings at which I have presided.

Mr. Levinson: I would like to make an offer of proof. If this witness were permitted to answer the last question he would have testified that it is the practice and the custom and has existed for such a great length of time in the United States as well as other countries in the advertising [179] of medicinal preparations to show on the product or in the advertisement a facsimile of an individual who is commonly known as a doctor or a person who is dressed up like a nurse, and that such a practice has come to be a custom used by the manufacturers of medicinal products, indicating to the public that the products are drug products.

Trial Examiner Reeves: The offer is denied.

Mr. Levinson: And we will note an exception.

Q. (By Mr. Levinson) Now have you engaged in any advertising of any kind respecting Femeze?

A. No, sir—you mean newspaper advertising?

Q. Yes. A. No.

Q. Have you engaged in any newspaper advertising of M. D. Supercones? A. No, sir.

Mr. Rhodes: You mean by newspaper? Periodicals?

The Witness: Periodicals, newspapers, or anything like that.

Q. (By Mr. Levinson) When did you cease advertising by newspapers of Contra-Jel?

(Testimony of Edward A. Bachman.)

A. Well, that was away back to about 1935 sometime. The Oregon Board of Pharmacy set up a law prohibiting the advertising of contraceptives. I think that was in 1935.

Q. And since that time you have not advertised it? [180]

A. No, sir, not in newspapers.

Q. When did you stop, or did you stop advertising M. D. Powder?

A. We stopped advertising M. D. Powder completely since early in 1939, and then we resumed advertising upon the advice of our attorney in Washington, with a changed copy that had no claims of any kind, simply naming it, about three months ago.

Q. Some time early this year?

A. Early this year, that's right.

Q. Will you tell us about when you stopped putting pamphlet inclosures in Femeze?

A. We stopped that about early in 1939.

Q. And what about M. D. Supercones, when did you stop inserting pamphlet inclosures on that product?

A. Those were stopped around '37.

Q. And how about Contra-Jel?

A. Contra-Jel—we slipped up on Contra-Jel. There was a piece of a folder that was let out to the public. It went out on packages that were on shelves of druggists that had stayed there for some time. We stopped putting them in packages late in 1939.

(Testimony of Edward A. Bachman.)

Q. There might have been some in prior deliveries? A. That's right.

Q. And you put out new pamphlets on M. D. Powder? [181] A. Yes, sir.

Q. Are you selling Femeze now?

A. No, sir.

Q. When did you stop?

A. We stopped—well, we just junked everything we had the first part of 1940, just threw it away.

Q. How about M. D. Supercones?

A. We stopped selling those in 1938. We only had one supply of those Supercones, the original supply, and we never bought any more, just got rid of what we had.

Q. Are you selling Contra-Jel?

A. No, sir.

Q. Now, with reference to this M. D. Medicated Douche Powder, do you make tests of it from time to time in your own laboratory or own store?

A. Well, my tests made in the store were from the standpoint of keeping qualities, and recently we sent a sample for a test to a reliable chemical firm who gave us a report on it which was particularly satisfactory.

Q. But do you from time to time take a sample of the bulk and test it?

A. Oh yes, we make solutions out of it and test it for the P. H. value.

Q. What is the distribution of this M. D. Douche powder?

A. Well, we have distribution in the states of



(Testimony of Edward A. Bachman.)

California, [182] Oregon, Washington, Alaska, Idaho, Montana, Utah, Nevada, and we also have some in Michigan and have some in Baltimore, and some in New York, and Kansas City.

Q. Originally the name of your company was Stanley Laboratories?      A. Yes.

Q. Then changed to Stanley Drug Products, Inc., when was that change effected?

A. We changed that upon advice of our Washington attorney the first of 1940, possibly late in 1939, because this complaint came in that they were not supposed to be called "laboratory", so it meant so little to us, what it was, we simply changed the name and asked for an incorporation under that name.

Q. All your products then go out under the name Stanley Products, Inc.?

A. Just exactly as it is on that can.

Q. Did you ever operate under the name of Stillman Products Co.?      A. No, sir.

Q. Did the Stanley Laboratories ever do business under the name of Stillman Products Co.?

A. No, sir.

Q. Do you recall when this Mr. White came to see you?

A. I recall seeing him on two separate occasions and I came [183] up to see him once in Seattle of my own free will.

Q. What was the nature of your visit with him, what was the purpose of it?

A. The first reason that Mr. White came into the

(Testimony of Edward A. Bachman.)

store at the time mentioned in the first report, it seems that there was another firm, the firm at Camas, Washington, manufacturing toilet tissue by the name of M. D. It seems also they were in business a very short time at that time and when our product came on the market we investigated. We knew that there was an M. D. toilet tissue people in the field, but we investigated through the Patent Office in Washington who wrote us back that M. D. trade-mark was open for drugs and chemicals, or medical appliances, which had no interference with any products that were not, so after that advice we went into the field and advertised, and they saw our advertising and they complained to the Federal Trade Commission. That is what Mr. White said. Mr. White was investigating at that time not our product from the standpoint of how good it was or where it was manufactured, or what place, he investigated it from the standpoint of interfering with the trade of M. D. toilet tissue people. That is what he told me then.

Q. Is that M. D. toilet tissue manufactured in Camas, Washington the same as the Pacific Coast Paper Mills, at Bellingham?

A. Yes, it is. [184]

Mr. Levinson: I would like to have this marked for identification.

Trial Examiner Reeves: It may be marked for identification Respondent's Exhibit No. 3.

(Document referred to was marked "Respondent's Exhibit 3" for identification.)

(Testimony of Edward A. Bachman.)

Q. (By Mr. Levinson) I am handing you for identification Respondent's Exhibit 3, and ask you what that is.

A. Well, it is a broadside that usually goes to the trade.

Q. Issued by whom?

A. Issued by the Pacific Coast Paper Mills, of Bellingham, Washington, and showing cuts and mats of the various items that they intend to run and very plainly showing the roll of toilet paper with the letters M. D., and the nurse and the cross, and also sanitary napkins with the letters M. D. and a cross, featuring extra values, to the trade.

Mr. Levinson: The respondent offers in evidence Exhibit 3.

Mr. Rhodes: I object to the introduction of the document into evidence for the reason that it has no bearing on this case at all. It is not one of the respondent's exhibits, but purports to be an exhibit of somebody else with regard to advertisements displayed by some other concern respecting some other product.

Trial Examiner Reeves: The objection is sustained.

Mr. Levinson: I would like to make a statement for [185] the record of our purpose of offering this exhibit. Since Your Honor has ruled I won't do it unless you withdraw the ruling——

Trial Examiner Reeves: You may proceed.

Mr. Levinson: The purpose of offering Respondent's Exhibit 3 is to show to the Commission that the letters M. D. in and of themselves or per se are

(Testimony of Edward A. Bachman.)

commonly used in the trade and do not mean medical doctor or doctor of medicine, but it is merely a trade-mark or a couple of letters which may be considered by the public as having to do with something used by individuals on their bodies, or what not. It is merely a trade-mark or trade name and does not in and of itself mean, or can it be deemed to mean, Doctor of Medicine. That is the purpose of my offer.

Trial Examiner Reeves: The offer is denied.

Mr. Levinson: It will be received subject to the objection? Is that the way it goes?

Trial Examiner Reeves: No, it has been marked for identification. If you care to apply to the Commission in person at the final hearing to have this received in evidence they will consider your offer.

Mr. Levinson: Well, in other words it is received for identification only?

Trial Examiner Reeves: It is marked for identification only. [186]

Mr. Levinson: All right.

Trial Examiner Reeves: I propose that you keep that yourself. The Reporter will not be charged with the custody of it.

Mr. Levinson: It will appear in the record, though?

Trial Examiner Reeves: Well, your comment will appear in the record.

Mr. Levinson: That is what I mean.

Q. (By Mr. Levinson): Now you testified on direct examination, Mr. Bachman, that you also

(Testimony of Edward A. Bachman.)

compound, sell and distribute other products. Now will you tell us whether or not Stanley Products, Inc., manufacture, sell and distribute other products under the same name of Stanley Drug Products Co.

A. No, sir. What I had reference to was in the drug store.

Q. You were also asked the question of whether or not you had a laboratory. Will you tell us briefly whether you have the essential equipment in your institution?

A. It all depends on the interpretation of laboratory. When I answered the question to Mr. Rhodes a while ago he said a professional man would be differentiated from a man who digs ditches. Well, we had a very fine prescription department and a prescription department is a laboratory where you compound U.S.B.&N.F. combinations, and I believe in that sense it would be a laboratory. It is a place where we can experiment. We can make up small batches of things and test them [187] and check them and you can get reports on them—have them used and get reports on them—and I would like to invite counsel here to examine our prescription department. We are very proud of its appearance and equipment.

Q. Now, Mr. Bachman, with reference to this particular product, is it antiseptic?

A. Yes, sir, it is antiseptic.

Q. Is there any statement made about this product that is false or misleading?

(Testimony of Edward A. Bachman.)

A. You mean on the can?

Mr. Rhodes: I object to that. The statements speak for themselves. They are in evidence.

A. There are no statements on the can. Directions for use is all that is on there.

Mr. Rhodes: Well, representations made with respect to the product are contained in the advertisements and pamphlets, and on the package in which they are contained, is that not true?

The Witness: That is right.

Mr. Rhodes: They speak for themselves, if Your Honor please.

Q. (By Mr. Levinson): Have you held out any advertising to the public or to the trade to the effect that M. D. is a contraceptive?

Mr. Rhodes: I object to that, if your Honor please. [188] The advertisements speak for themselves.

Trial Examiner Reeves: The objection is sustained.

Q. (By Mr. Levinson): Mr. Bachman, you testified on direct examination that no application has been made to the Oregon State Board of Pharmacy to register the M. D. Douche Powder. Is that true?

A. Yes, it is true, and the reason we did not ask for it is because we don't consider it a contraceptive and the Board of Pharmacy in the State of Oregon upon our first distribution of this product issued a letter informing the trade, to whom it may concern, that this product was permitted to be sold in either drug stores, or stores that had a shopkeeper's li-



(Testimony of Edward A. Bachman.)

cense, which are licenses which permit them to sell harmless drugs. That was issued, in 1936, in the month of February or March right after we distributed it. The reason that came up was because some merchants felt because they were not drug stores, and they wanted to buy this for resale purposes, that they had no authority to buy it if it was a contraceptive, but could buy it if it was a mild antiseptic, and the Board issued that letter.

Mr. Levinson: I believe that is all.

Trial Examiner Reeves: Off the record.

(Discussion off the record.)

Mr. Levinson: I will move the Court to withdraw Respondent's Exhibit No. 1. [189]

Trial Examiner Reeves: It will be so ordered.

#### Redirect Examination

Q. (By Mr. Rhodes): With respect to the product Contra-Jel.

Q. You did at one time so advertise it.

A. Yes, sir.

Q. Now with respect to Femeze.

A. No, sir, not in newspapers, at no time. We only advertised [190] it through pamphlets once, as inserts.

Q. You did advertise it through pamphlets and circulars at one time? A. Yes. [191]

Mr. Rhodes: Without objection, if Your Honor please, I offer that in evidence as Commission's exhibit.

Mr. Levinson: We have no objection.

(Testimony of Edward A. Bachman.)

Trial Examiner Reeves: It will be received as Commission's Exhibit 51. [193]

### Redirect Examination

Q. (By Mr. Rhodes): I will ask you now with respect to the advertisement on the can, does a picture of a nurse and a cross appear on the can in which the product is contained?

A. That was not the question.

Q. I am asking you now. A. Yes, sir.

Q. Together with the letters M. D.

A. Yes, sir. [194]

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### ELOISE DOUGLAS,

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Rhodes:

Q. Will you give your full name to the Reporter? A. Eloise Douglas.

Q. Where do you live?

A. Portland, Oregon.

Q. Are you engaged in any kind of business?

A. I am employed as a stenographer for the Oregon State Board of Pharmacy.

Q. In the course of your employment do applications for registration of pharmaceutical products pass through your hands? A. Yes, sir.

Q. Are they kept in files accessible to you?

(Testimony of Eloise Douglas.)

A. That's right.

Q. At my request have you examined your files with respect to [195] Stanley Laboratories?

A. Yes, sir.

Q. And Stanley Products, Inc.

A. Yes, sir.

Q. That last is Stanley Drug Products, Inc. Upon examination of the records will you state whether or not either of these companies, Stanley Laboratories, Inc. or Stanley Drug Products, Inc. have registered with the Oregon State Board of Pharmacy the product Femeze.

A. According to our records they have never registered this product.

Q. Have they ever registered a product designated M. D. Medicated Douche Powder?

A. No, sir.

Mr. Levinson: I think the records would be the best evidence, if Your Honor please, if there are records.

Trial Examiner Reeves: Well, I think in the interests of saving time we shouldn't require them to bring the records over.

Q. (By Mr. Rhodes): Have they ever registered a product known as M. D. Medicated Supercones?

A. Well, is this for 1941 or previously?

Q. During 1941 do your records show whether or not that M. D. Medicated Supercones were registered by the respondent?

A. According to our records they have regist-

(Testimony of Eloise Douglas.)

ered no products, [196] including Supercones, for 1941.

Q. Have they registered a product known as Contra-Jel?      A. Not for 1941.

Q. They have not registered any of these products?

A. No, for 1941 they haven't registered any of their products.

Q. Was registration applied for by the respondent for the registration of M. D. Supercones?

A. No, sir.

Q. Or for M. D. Medicated Douche Powder?

A. No.

Q. I hand you Commission's Exhibit 41 which purports to be an application by the Stanley Laboratories to the Oregon Board of Pharmacy for the registration of two products, one designated Contra-Jel and one designated M. D. Supercones, a suppository containing Oxyquinolin Sulphate, and ask you to examine that, please, and state what was done by the Board with respect to the application of the registration of M. D. Supercones?

A. Well, the M. D. Supercones in this case were tested by our laboratory and they didn't meet our requirements. Therefore the license is only issued for the Contra-Jel.

#### Cross Examination

By Mr. Levinson: [197]

Q. Now, what is the purpose of registering

(Testimony of Eloise Douglas.)

various medicated products with the Oregon State Board?

A. Well, under the Oregon Prophylactic and Contraceptive Law, no products of this kind like Contra-Jel can be sold in Oregon unless they are licensed by the Oregon Board of Pharmacy.

Q. Then no application has been made to register M. D. Medicated Douche Powder. Is that right?

A. That's right.

Q. And you have received no application from Stanley Drug Products, Inc. to register any of its products?

A. For 1941?

Q. Yes.

A. No, sir.

Q. Did you at any time ever receive any application to register M. D. Medicated Douche Powder?

A. No, sir. [199]

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F. R. STIPE

was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Rhodes:

Q. Give your name to the Reporter, please.

A. F. R. Stipe.

Q. Where do you live?

A. Portland, Oregon.

Q. How long have you lived there?

A. Oh, it has been close to 45 years.

(Testimony of F. R. Stipe.)

Q. What is your business?

A. Wholesale drugs.

Q. How long have you been engaged in the business of wholesale drugs?      A. About 26 years.

Q. What is the style of the firm with which you are connected?

A. At the present time McKesson & Robbins, Inc.—Blumaeur-Frank, Pacific Division—I think that is it.

Q. Is that a wholesale drug company?

A. Wholesale drugs.

Q. Both companies whose names you mentioned are wholesale druggists?

A. It is one concern. McKesson-Robbins bought the Blumaeur-Frank Drug Company and they were consolidated. McKesson [200] Pacific Company was the other firm, that is the McKesson concern, so they distinguished by Blumaeur-Frank Pacific Division here in Portland.

Q. Are you familiar with the products, such as Medicated Douche Powder, Contra-Jel, Subcones, used by women, are you familiar with those products?

A. Subcones? No, I am familiar with the M. D. Medicated Douche Powder and Contra-Jel, but I can't say that I am familiar with——

Q. Supercones.

A. Yes, I think I have heard of that name, yes.

Q. I am asking you now if you are familiar with this class of products?      A. Yes.

Q. And the uses to which they are put?



(Testimony of F. R. Stipe.)

A. Yes.

Q. What is the general purpose and use to which they are put, or the use made of them by women?

A. Why, sanitation I would say and germicide, supposedly [201] preventing conception.

Q. I believe you stated you were familiar with the product known as M. D. Medicated Douche Powder? A. Yes.

Q. A product that was offered for sale and sold by Stanley Laboratories. A. Yes.

Q. And now being sold by Stanley Drug Products, Inc. A. Yes, sir. [202]

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DR. NORMAN A. DAVID

was thereupon sworn as a witness by the Commission and testified as follows:

Direct Examination

By Mr. Rhodes:

Q. Give your full name to the reporter, please.

A. Norman A. David.

Q. What is your occupation, Doctor?

A. I am a teacher at the University of Oregon Medical School, Professor of Pharmacology.

Q. How long have you occupied that position?

A. I have been there since September, 1937.

Mr. Levinson: The Respondent will admit the Doctor's qualifications.

(Testimony of Dr. Norman A. David.)

Q. (Mr. Rhodes, continuing) What branch of medicine do you specialize in?

A. I teach pharmacology, which is the study of drugs, their action on living tissues, humans, animals, and also I teach materia medica which deals with the source and origin of drugs and plants,—plant drugs—and toxicology which concerns the symptoms of poisoning and the treatment of poisoning. [206A]

Q. What is the nature of your clinical work?

A. I do some clinical work in that I am an instructor in medicine in the out-patient clinic at the University of Oregon Medical School. I am also Chairman of the Student Health Committee, taking care of the medical students.

Q. Have you had any experience treating female patients?

A. I have done some research work recently which concerned the treatment of a female condition of the vagina trichomonas infection—I did this work in conjunction with another physician who is a gynecologist and this work consisted in studying the effects of the drugs we used on the organism.

The drug we used was Iodochlor Oxyquinaline, which is closely related to Oxyquinaline Sulphate.

We carried out this work at the State Tuberculosis Hospital and Industrial School for Girls at Salem. The study consisted of introducing this particular drug into the vagina and observing the effects on the organism. We would make tests to see whether or not the organism disappeared after a suitable period

(Testimony of Dr. Norman A. David.)

of treatment. That was about 2 years ago we concluded that study.

Q. You mentioned the treatment of what was it?

A. Trichomonas. It is a very common female condition. It is an infestation in that it isn't an organism, it is a parasite which is present and invades the vaginal canal but it does not usually get into the blood stream, so we call it an infestation [207] rather than an infection, and I would say it is present in about 50 per cent. of all women. It causes leukorrhea, itching, discharge,—a very odorous discharge—and it is very unpleasant, rather resistant to treatment, also.

Q. And what is the drug you mentioned you used in treatment?

A. The drug is Iodochlor Oxyquinaline. It is commonly known as Vioform-Ciba.

Q. Have you ever done any special work with Oxyquinaline Sulphate?

A. About 10 years ago, I assisted in a rather extensive study of the treatment of amebic dysentery or amebiasis, and this involved considerable research. A part of the study was devoted to a comparison of the various Oxyquinaline compounds since they have been known to be effective against amoeba, and we compared several available Oxyquinaline compounds, such as Oxyquinaline itself, Oxyquinaline Sulphate, and different chlorinated Oxyquinalines, such as Iodide or Chlorine combinations of Oxyquinaline.

(Testimony of Dr. Norman A. David.)

The work was done on guinea pigs at to toxicity and also we treated guinea pigs which had a natural infestation with a parasite that is common in guinea pigs, to see which one of these drugs was most effective in curing these animals, and in this way we found this Vioform I mentioned was one of the best drugs for this particular purpose, and Oxyquinaline and Oxyquinaline Sulphate were rather ineffective for the particular work we were [208] doing on amoeba and that is generally true, so far as the drugs compared, the Oxyquinaline Sulphate and Oxyquinaline itself were relatively ineffective in effecting a cure in these animals.

Q. Do you lecture on antiseptics and germicides?

A. Yes, that is part of the course, and I devote about four or five hours in covering all the antiseptics that usually are dealt with in all textbooks on pharmacology and Pharmacy II is devoted to this subject and it is considered as part of the study of pharmacology, the action of chemicals on tissues and on bacteria.

Q. Now, Doctor, in the case before us, we have to do with four medicinal preparations, and I will give you their names, briefly, and then we will dwell on the preparations. In the order in which they are designated in the complaint in this case, they are M. D. Medicated Douche Powder, the second is Contra-Jel,—that is the name of the product; the third is M. D. Supercones, and the fourth is Femeze.

The formula for M.D. Medicated Douche Pow-

(Testimony of Dr. Norman A. David.)

der is shown by Commission's Exhibit 18 in this case. I hand you that exhibit and ask you to examine that, please.

A. I have examined it.

Q. Are you familiar with the various drugs mentioned in the formula? A. Yes, I am. [209]

Q. And their effect? A. Yes.

Q. With respect to this preparation, the following representations are admitted to have been made by the respondent. Those representations are set out in the indented paragraph on page 3 of the complaint which I hand you. Will you examine that? A. On page 3?

Trial Examiner Reeves: Page 2 of that copy.

The Witness: You say M. D. Medicated Douche Powder?

Mr. Rhodes: Yes.

A. Yes, sir.

By Mr. Rhodes:

Q. Will you read that, please?

A. I have read it.

Q. Will you note that it is represented as a valuable prescription for discriminating women produced for discriminating modern women who desire a sanitary and dependable douche to insure their personal hygiene, and I will ask you with respect to that statement if you will give me your opinion?

A. The words "dependable douche" are used with the inference that it is dependable both from a prophylactic, or rather, as a spermicide or contraceptive and dependable in killing infectious

(Testimony of Dr. Norman A. David.)

organisms. And I know of no douche which could [210] be admitted into the female vaginal tract which could be called dependable both from a contraceptive or spermicide and bactericidal action.

Q. You have read the formula?

A. Yes, sir.

Q. In your opinion, would such a douche powder be dependable in the sense in which you interpret it to mean?      A. It would not.

Q. The second statement, as I remember it, "It is but recently that scientific research has developed new improved methods to safeguard the health and happiness of married women". Will you give me your interpretation of that?

Mr. Levinson: I would like to note an objection to this, your Honor, on the grounds the question would be incompetent, immaterial and irrelevant and as calling for a conclusion of this witness, which has nothing to do with the medical features of the product.

Trial Examiner Reeves: The objection is overruled.

Mr. Levinson: Note an exception.

Mr. Rhodes: You may answer.

A. Well, in that it is necessary in discussing the advantages and disadvantages and effects of various douche powders in my lectures in pharmacology to the medical students, we consider these different products. We are also obliged to mention or say something about the methods of contraception. Now, this [211] statement is all right alone, not included



(Testimony of Dr. Norman A. David.)

in the body of the other material, because I think that most gynecologists, which I am not qualified as,—most gynecologists admit that the use of a diaphragm along with with some medicated preparation, preferably a jelly, is about the safest method of contraception that we have, and it is admitted generally by all physicians that there is no absolutely dependable method of contraception.

When occlusive diaphragms and medicated preparations are used—those two—the use of the jelly and a diaphragm are not absolutely dependable, so that might be what this statement refers to.

Q. But it does not stand alone, does it—the statement?

A. This statement is included to infer—it applies to the douche powder,—the statement alone might be true, but the way it is read here it refers possibly to the powder, as I see it.

Q. It refers to the product being advertised?

A. Yes, sir.

Q. Now, taking it in connection with the further statement endorsed by physicians,—“Medicated Douche Powder not only cleans the vagina and soothes the delicate membrane tissues but has the added advantage of the protection of Oxyquinoline Sulphate, a dependable safeguard——”

A. As far as being endorsed by physicians and surgeons, I doubt that very much, that physicians and surgeons would [212] generally endorse this as a dependable safeguard.

“The added advantage of the protective action of

(Testimony of Dr. Norman A. David.)

Oxyquinaline Sulphate, a dependable safeguard" is inferring that the Oxyquinaline Sulphate is effective as a spermicide and a safeguard against pregnancy, which it most certainly is not. Oxyquinaline Sulphate is commonly used in douche powders, but it is known that in the quantities that it is included in powders, that is about .3 of 1%, that it is very slightly spermaticidal—it kills the sperm very slowly, if at all. Larger concentrations of Oxyquinaline Sulphate, up to 3%, also are slightly spermaticidal, but when larger concentrations are used, there is the danger of systemic absorption of the Oxyquinaline Sulphate with possible toxic action on the liver, so as far as it being a dependable safeguard, it is not a dependable safeguard against pregnancy nor against infection by bacteria that may be admitted to the vaginal tract.

Q. Now, with respect to the statement, "Effective in combating any form of bacteria", give us your opinion as to the effectiveness of this powder.

Mr. Levinson: One moment, Doctor, please. Your Honor, I don't like to interpose objections continuously, but I understand that the stipulation has taken care of the matters that counsel is asking the witness, and there has been a stipulation. Now, in spite of the stipulation, will there be [213] evidence offered?

Trial Examiner Reeves: You are referring to the stipulation entered at Washington on the record in this case?

(Testimony of Dr. Norman A. David.)

Mr. Levinson: Yes, that this hearing is limited to I think the misbranding or mislabeling.

Trial Examiner Reeves: I didn't so understand it, and I didn't understand that the stipulation would terminate the taking of testimony on any phase of the proceedings.

Mr. Levinson: In other words, testimony will be introduced and offered on the whole case, irrespective of the stipulation?

Trial Examiner Reeves: Yes, supplemental to the stipulation.

The Witness: Shall I proceed?

Mr. Rhodes: Yes.

A. The statement "Effective in combatting any form of bacteria" is very broad, because there are many forms of bacteria, some of which are very resistant to the action of drugs, such as spores which are certain forms of bacteria, also such as the tuberculosis organism and the spirochete of syphilis also is rather resistant to the action of drugs, and naturally in lecturing to my students, I have to consider something of the action of vegetative forms of bacteria, or spores, or other organisms which may not belong exactly in the classification [214] of bacteria, such as parasites and spirochetes which are on the outer realm of bacteria, so that I think this statement is entirely too broad.

Q. What do I understand you to mean, that the statement is too broad?

(Testimony of Dr. Norman A. David.)

A. That Medicated Douche Powder is not effective in combatting any form of bacteria.

Q. All forms of bacteria?

A. All forms of bacteria.

Q. Now, there is one other statement I want you to give your attention to, and that is the statement, "It relieves women of fatigue and annoying discharge often occasioned by all day standing".

Mr. Levinson: I object to the question on the ground that this witness is not qualified to testify as a gynecologist.

Trial Examiner Reeves: The objection is overruled.

Mr. Levinson: May I note an exception?

A. As a physician and as one who has treated women for leukorrhea in the past, and as one who has to occasionally consider female disorders in discussing the effects of drugs and lecturing on the effects of drugs to medical students, my opinion is that a good many female disorders may be accompanied by fatigue and discharge. These are the basic disorders, [215] and they must be corrected in order to treat the patient. The use of a douche and other things are only temporary remedies, and do not relieve or cure the person who complains of these symptoms. Medicated Douche Powder may through its slightly cleansing and astringent action temporarily clean out the vaginal tract, but how it would relieve the woman of fatigue, other than psychologically, I don't know.

Q. Well, what is your opinion with respect to

(Testimony of Dr. Norman A. David.)

the effectiveness of this powder in relieving the conditions stated?

A. I don't believe that it would relieve women of fatigue or the annoying discharge in the sense that it is implied here, that it relieves them of those conditions.

Q. Now, with respect to the use of the letters "M.D." in connection with this douche powder, will you state what your reaction is as to that?

A. Well, the only interpretation I have of the letters "M.D." is that it refers to Doctor of Medicine, and therefore would be a product that is endorsed by doctors. The letters stand for "Medical Doctor", and naturally that is what one would think.

Q. The letters used in the association in which they are used in this connection, have what effect, in your opinion?

A. It would make me think that the powder is possibly recommended by a physician, but I must supplement that statement because I know that no physician, reputable, ethical physician, [216] sells or puts his approbation on any douche powder. He may prescribe them, or write prescriptions for them, but I do not think that a doctor would sell this with the idea that other physicians and surgeons——

Q. Well, would a doctor write a prescription for a woman prescribing a douche powder without an examination of the woman?

A. No, he would not.

Q. Is there any one douche powder——



(Testimony of Dr. Norman A. David.)

A. There is not.

Q. —or treatment that could be universally prescribed on cases?

A. No, sir. There are many different conditions of the female vaginal tract, many different infections, and these require different forms of medication. There is no one douche powder that would serve the purpose for all conditions.

Q. Now, with respect to the product designated as Contra-Jel, the formula for that product is shown on Commission's Exhibit 19 which I hand you. Are you familiar with the medicines described?

A. I am.

Q. On page 3 of the mimeographed copy of the complaint which I now hand you, the indented matter at the top of the page, it sets out certain advertisements or representations made by the respondent with respect to this product. Will you examine that [217] please?

A. I have examined it.

Q. Now, with respect to the statement, "Contra-Jel is the highest quality vaginal antiseptic in jelly form. It consistently insures even distribution and prolonged contact with every part of the vaginal tract, and its protective action endures as long as it remains within the vagina", will you state for the record what your interpretation is in that respect?

A. The formula of Contra-Jel showed that it again depended or used for one of its active ingredients Oxyquinaline Sulphate, also lactic acid, bo-



(Testimony of Dr. Norman A. David.)

ric acid is contained in the product. It is stated in this complaint that it is a vaginal antiseptic, and the different drugs which I have just mentioned, Oxyquinaline Sulphate, lactic acid and boric acid are possibly mild antiseptics. With reference to the statement that its consistency,—of jelly,—insures even distribution and prolonged contact with every part of the vaginal tract, I believe that statement is misleading or not true, because it is generally known that the jelly must occlude or close over the cervical os,—the entrance to the uterus,—in order to prevent the entrance of spermatozoa, and naturally during the mechanical action of coitus, the preparation Contra-Jel would not be present in sufficient distribution to be effective. Protective action of the drug may endure for a [218] fairly long time, but its protective action infers, or refers to its spermaticidal action as I mentioned before with reference to the M.D. Medicated Douche Powder, that Oxyquinaline Sulphate or lactic acid or boric acid, and I believe in the form it was stated that the PH—that is with reference to the acidity of it—is about 2, those drugs alone, or the acidity of the Contra-Jel or the drugs in combination with the acidity, would not give sufficient protection against the possible admission of some sperm into the uterine canal, that is, the preparation would not be completely protective or spermaticidal since it is admitted that no jelly is completely or absolutely dependable as a spermaticide.

Q. Now, the next statement or representation

(Testimony of Dr. Norman A. David.)

it is said that "Contra-Jel is a harmless, non-irritating, vaginal antiseptic and prophylactic." What do you mean by the term prophylactic in connection with this statement?

A. Prophylactic means,—usually means the prevention of disease, but in the sense that it is used here, it means that it is a preventative against pregnancy as one would naturally interpret the statement, — Contra, — "against", — against pregnancy,—Contra-Jel, and the word is used with more reference to pregnancy than the prevention of disease.

Q. Now, taking up the third preparation, designated in the complaint, M. D. Supercones, it is represented that they are "Stable and do not lose their antiseptic strength,—a powerful[219]yet non-irritating antiseptic—M.D. Supercones remain in effective antiseptic contact for many hours—they are actually soothing and beneficial as well as antiseptic". Will you state, please, what your conclusion is as to the statements made there with respect to Supercones—the impression that it conveys to your mind, and whether or not that statement is truthful?

Q. Are you familiar with the product known at Norwich's Noriform?

A. I have seen the product and know something about it.

Q. Can you state from your recollection as to the formula?

A. The formula—it possibly depends on Oxyquinoline Sulphate in a cocoa butter preparation along

(Testimony of Dr. Norman A. David.)

with boric acid, possibly some alum—I am not sure about the alum—some salicylic acid. That is about as much as I recall about it, the Oxyquinaline Sulphate possibly being the main ingredient.

Q. The formula for Supercones is boric acid, 5 grains, Oxyquinaline Sulphate, 1 grain, salicylic acid, 1 grain, mercury iodide red, 1/200 of a grain—and cocoa butter. Now, referring [220] to the formula for Supercones,—will you go back to the statement in the complaint and examine that, please?

A. I have examined it.

Q. With respect to the statements there made, bearing in mind the formula, will you state for the record your impression of the meaning conveyed by the representations made?

A. In the first place, it is admitted that cocoa butter suppository is less efficient than a jelly in any spermaticidal effect. Also the drugs which are incorporated in cocoa butter—since cocoa butter is not water-soluble—the drugs are not easily distributed over the vaginal tract.

The statement is made here that it is a powerful yet non-irritating antiseptic. A powerful antiseptic would be one which inhibits the growth of most forms of bacteria, and from my knowledge of the drugs incorporated in Supercones, I do not believe that it possesses this effect.

The statement is also made that it is non-irritating. Now, salicylic acid and red iodide of mercury in sensitive individuals may prove to be very irritating. It may cause edema and a swelling of the

(Testimony of Dr. Norman A. David.)

vaginal mucosa and may actually lead to a discharge from the effects of the drugs. That is, of course, in certain sensitive individuals, and no one knows whether or not they have a sensitivity to salicylic acid or to the iodide of mercury until they try it. I may say that people have been known to die from 5 grains of aspirin who had [221] a sensitivity to the drug, and they knew it, also, and the doctor prescribed aspirin in some other preparation, not calling it aspirin, and the people died from the generally used dose of aspirin, so the statement here that it is non-irritating, is not true.

The point that Supercones remain an effective antiseptic contact for many hours, I mentioned previously with relation to Supercones that the cocoa butter prevented the complete distribution of the drugs incorporated in it, and therefore the contact would not be completely effective in so far as being adequately and thoroughly distributed over the vaginal tract or around the cervical os which is the point of entrance of the spermatozoa into the uterine cavity.

As far as the statement that they are actually soothing and beneficial, the word "soothing" refer to lessening irritation or itching of the vagina, and these drugs may have a mild action of that type.

The word "beneficial" is indefinite to me, and I can't interpret as to just what Supercones would be beneficial for.

Q. Would not that refer to the condition of the female organs as applied here?

(Testimony of Dr. Norman A. David.)

A. I would be unable to answer that. I have just stated that there is a possibility of a harmful effect, an irritating effect from the salicylic acid or red iodide of mercury in which it could not be beneficial. [222]

Q. What other use would you say that a Supercone would be put to except for the treatment of female organs as described in this case?

A. No other use, but "female organs" implies those organs within the peritoneal cavity and here it is just the outer vaginal tract, the outer part of the female organs, if you want to call them that, so that it would only be used to prevent infection, for the treatment of leukorrhea, and infectious conditions of the female tract, and for the prevention of pregnancy.

Q. Would this preparation, Supercones, as shown by the formula be effective in the treatment of the conditions you describe—by "effective", I mean, would they be a cure?

A. They would not.

Q. Now, with respect to the product "Femeze", are you familiar with that product and its use?

A. I am—I know about it. I have not used it.

Q. Are you familiar with the formula?

A. I am.

Q. Will you state for the record what the formula of Femeze is?

A. I have seen a package of it, and it is stated on the package that it contains acetphenetidin or Phenacetin, which is an acetanilid derivative that



(Testimony of Dr. Norman A. David.)

is present in the tablet in the strength of  $1\frac{1}{2}$  grains of this particular drug. I have also [223] been told that it may be admitted it contains some caffeine. How much, I do not know.

Q. It is stated, with respect to Femeze, or represented, rather, by the respondent, as described in the complaint. Will you examine that, please?

A. I have read it.

Q. It is represented that "Femeze has been found to be a simple effective prescription affording relief for the functional pains and cramps which accompany menstruation—bringing relief in a short time by relaxes the contracted womb muscles, allowing them to react in a natural way. It does not merely deaden your nerves with drugs or narcotics to stop the pain. Femeze contains no narcotics."

Will you state your reaction to the representation made?

A. The statement is made that it relaxes the contracted womb muscles. The womb or uterus is a muscle made up mostly of muscle tissue. Femeze contains acetphenetidin and it is well known that this drug does not act on any of the viscera such as the uterus or the intestinal tract or gall bladder, or the bladder,—urinary bladder. The action of this drug is central, on the so-called pain areas in the brain, the higher parts of the brain, and the action is to lessen the sense of pain so that the woman who is suffering from menstrual cramps feels less pain, and actually the cramps may continue, and there is no action on the uterus. The caffeine in the drug,



(Testimony of Dr. Norman A. David.)

if it [224] admitted that there is caffeine in it—I have heard that there is—together with the phenacetin, the common name for acetphenetidin, to better deaden pain. They both act on the brain and the caffeine may also have a slight stimulating action and make the person feel less fatigued, but if this drug is used in the evening or at bedtime, the caffeine would possibly keep the patient awake during the night at the time when she would probably most desire relief from the menstrual cramps. That is well known, because we have several headache tablets which include acetphenetidin and caffeine and some aspirin in their composition.

Such drugs in combinations are known as fairly good analgesics, particularly for pains of a congestive type, a congestive headache, the discomfort that goes with a common cold and those conditions. There would not be any relaxing action of a contracted uterus brought about by the action of either of these drugs alone or in combination.

Q. The effect, then, if any, in the use of this drug as I understand you, would be to temporarily relieve pain and not to relieve the cause, or the seat of the trouble?

A. Yes, sir. The drug acts centrally and lessens the sense for pain, deadens the sensory parts of the brain.

Q. May the contraction of the uterus be caused by many diseases?

A. It may be caused by a number of female disorders, and if [225] there is such a condition, we,

(Testimony of Dr. Norman A. David.)

as physicians recognize that these conditions must be corrected, and I teach my students that drugs are only for temporary relief, just as they are for toothache. If you have a toothache, you don't take drugs to stop the toothache, you go to the dentist and have that tooth fixed, and the same is true of menstrual cramps. They indicate some pathology or disorder which must be corrected by various means, and not by the use of drugs.

Q. How would you go about determining the disorders as a physician?

A. In my work in the out-patients clinic, I am required to supervise the pelvic examinations, do about four or five a week. I do not qualify as a gynecologist, but there are certain conditions that a physician should be able to recognize, and naturally in order to recognize these conditions, a pelvic examination or examination of the female organs is made, and retroversion or retroflexion of the uterus or tears in the cervix, misplacements, the presence of tumors, cysts, and all those conditions are looked for, and then the condition is summarized or evaluated accordingly.

Q. Can the conditions be evaluated without an examination?      A. They cannot.

Q. It is only upon physical examination——

A. Yes, sir.

Q. ——of the patient—— [226]

A. Yes, sir.

Q. ——that it can be determined?

A. Yes, sir.

(Testimony of Dr. Norman A. David.)

Cross Examination

By Mr. Levinson:

Q. Prior to being called here as a witness in this case, had you ever heard of M. D. Medicated Douche Powder?

A. Yes, I had seen it, and I had not heard of it being used—I mean, I had seen it down in the drugstore and saw the label and asked about it, and was told that Mr. Bachman made the product.

Q. Do you know in a general way, or specifically, the ingredients of M. D. Douche Powder?

A. As they have been read out to me.

Q. As a professor, and also in your gynecological work, do you have any objection to the use of a douche powder by a woman?

A. I don't—unless—for certain conditions.

Q. But speaking generally, if a woman would use a douche powder just from a cleansing standpoint, just to wash the vaginal tract, would you as a doctor or professor have any particular objection to that?

A. Generally, no. There are certain conditions, late pregnancy, a very large open cervix, certain pathologic conditions, where you would not wish the introduction of drugs into the uterine [227] canal and those conditions would prohibit or make the use of a douche inadvisable.

Q. Would you say that preparations containing boric acid are objectionable, objected to by doctors, for a vaginal douche?

(Testimony of Dr. Norman A. David.)

A. They are not.

Q. And would you say that potassium alum——

A. No, they are usually included—potassium alum is a very reliable astringent.

Q. And phenol?

A. Phenol is particularly objectionable, and I may be a little super cautious about its use, particularly with reference to these carbohic acid compounds. The proprietary one that we know most commonly—I had better not refer to it by name, but the phenol has a very corrosive and caustic action on the vaginal tract, and the use of pure phenol preparations alone is absolutely dangerous.

Q. But in combination with others——

A. A small amount may be all right.

Q. And eucalyptol, is that used?

A. That is not usually incorporated in douche powders because it is not water soluble. It is there for its pleasant odor.

Q. An oil of white thyme?

A. Oil of thyme, of course, imparts a pleasant odor, and it is an oil and sticks to the mucosa and may be a slight deodorant. [228]

Q. How about oil of peppermint?

A. Oil of peppermint imparts to the vaginal mucosa a slight cooling effect, also its odor is pleasant.

Q. How about zinc sulphate?

A. Zinc sulphate is both astringent and mildly antiseptic.

Q. And all these products I just read, as well as

(Testimony of Dr. Norman A. David.)

Oxyquinaline Sulphate, are they particularly objectionable as a douche properly chemically combined together?      A. Not as cleansing douche.

Q. These products are recognized by the Pharmacopoeia as being mildly antiseptic?

A. Yes.

Q. What in your opinion is the meaning given by your profession to the word "antiseptic"?

A. Antiseptic is a substance, a drug, chemical or material of some sort which inhibits the growth of bacteria. There are certain requirements for standardization which is not in my province, it is in that of a bacteriologist who is qualified to talk about these, that is the ability of a certain concentration of a drug to kill certain bacteria in a certain time. There are four or five things that must work together, and an antiseptic is a preparation which inhibits the growth of bacteria.

Q. Does an antiseptic necessarily have to destroy germs?

A. No, that would be a germicide. A germicide kills bacteria.

Q. In other words, a particular product can be antiseptic [229] and not germicidal?

A. That is right. Depending on the time in which it has to act. An antiseptic if used in sufficient concentration and allowed to act sufficiently long may be germicidal.

Q. Now, Doctor, are you testifying that the letters "M. D." indicate to you that it was a preparation made by doctors, is that what I gathered?

(Testimony of Dr. Norman A. David.)

A. Well, it refers in some way—it is like the symbol for prescriptions,—the Rx, and M. D., one looks at that and his first thought would be that it is in some way connected with the Doctors of Medicine.

Q. Isn't it true, Doctor, that the letters M. D. unless accompanied by an individual name, really have no definite meaning? In other words, if you saw the letters "M. D." on a window, without anybody's name, you wouldn't know whether they were selling soap or whether it was a restaurant, but isn't it true that the letters M. D. generally if not always follow the name of some individual?

A. Yes, that may be true, but then we have the symbol which is attached to automobiles used by doctors, physicians and surgeons, which has just the red cross very similar to this, and "M. D." and there is no name there. It is simply the symbol which the medical association supplies to physicians to identify their automobiles as belonging to a physician, and their name isn't on that symbol, but just the registration [230] number of the auto.

Q. When you were in the drug store and saw this can of M. D. Medicated Douche Powder, you are not testifying that it came to your mind from merely observing it on the shelf, that there was a doctor connected with that product?

A. Well, naturally I knew better, as I have stated before, but if a doctor was connected with the product, he was not what we would call reputable or ethical.



(Testimony of Dr. Norman A. David.)

Q. Are you acquainted with M. D. Toilet Tissue?

A. I have heard of that, and the symbol used here is very similar.

Q. And that didn't indicate to you that it was a doctor's prescription, did it?      A. No.

Q. Have you ever heard of M. D. Sanitary Napkins?      A. No, I have not heard of those.

Q. Are you acquainted with the Hand Books of Obstetrics and Gynecology edited by Doctors Joseph B. Delee and J. B. Greenhill?

A. No, I am not, but I am acquainted with Dr. Joseph B. Delee. My wife worked with him as a trained nurse a number of weeks.

Q. Most of your profession are acquainted with him?

A. Yes, he is one of the leading obstetricians and gynecologists in the country.

Q. I am going to call your attention to a statement made by [231] Dr. Joseph B. Delee in his Year Book of 1937, at page 319 and page 320, and I will just hand you the book and let you read it for yourself.

Q. This is not by Dr. Delee, it is by Dr. Greenhill, whom I don't know. It is edited also by Dr. Delee. He edited the material up to page 303, Gynecology, and the discussion on that subject is edited by Dr. J. B. Greenhill who is Professor of Obstetrics and Gynecology at Loyola Medical School in Chicago, so that statement is not by Delee. Greenhill, I don't know.

(Testimony of Dr. Norman A. David.)

Q. Read the statement and see if it will assist you in answering the question. A. Yes.

Q. Now, Doctor, in view of the statement contained in this book, which I have just shown to you and which you have read, is it not reasonable to believe that a powder similar to Medicated Douche Powder is harmless?

A. The particular powder there did not include Oxyquinaline Sulphate. My objection is against Oxyquinaline Sulphate used promiscuously, we will say—not on the prescription of a physician.

Q. Well, would you say that the use of one gram to one pound of powder of Oxyquinaline Sulphate is particularly harmful?

A. The statement “particularly harmful”, not if it is not used too frequently, and if the person is not sensitive to Oxyquinaline Sulphate. I might add that Oxyquinaline Sulphate [232] is very similar to quinine. Most lay people know that quinine in some people produces very serious toxic reactions.

Q. Are you familiar with the statement in the United States Dispensatory—Wood-LaWall, 22 Edition, page 1505, which reads as follows:

“As a bacteriostatic—as a vaginal douche—as an antiseptic in various conditions such as vaginitis there is much evidence of its value”—

this of course is relating to Oxyquinaline Sulphate—

“harmless to mucous membrane, can be used in almost any concentration as a germicidal, vaginal douche solution 1 to 1000—”

(Testimony of Dr. Norman A. David.)

Mr. Rhodes: I object to the statement based on the statement of the attorney. If that statement is made in the authority referred to, the authority should be produced and the doctor be permitted to examine the authority.

Mr. Levinson: I asked if he was familiar with it.

Trial Examiner Reeves: Objection overruled.

A. I may say that Dr. LaWall is a Pharmacist, and Dr. H. B. Wood is also a Pharmacist, I am not sure he is a Doctor of Medicine. Therefore, I don't think either of them would be qualified to make any statement on their own authority or experience as to the safety of Oxyquinaline Sulphate. They have incorporated data which has been published elsewhere in the Dispensatory.

Q. (Mr. Levinson): Will you just answer this one question, [233] Doctor: Is it your testimony that the use by a woman of Medicated Douche Powder such as we have here in front of you is or is not harmful if used by the average woman?

A. I have already stated that under certain conditions when its use is not watched by a physician, that it may possibly be harmful due to systemic absorption, or due to sensitivity which is something we can't explain on the part of the patient. Otherwise, in the majority of individuals it would be harmless.

Q. Is it your testimony that all douche preparations used by women should be prescribed by a physician?

(Testimony of Dr. Norman A. David.)

A. Yes, it is, because there are various conditions which require various medicines—medication.

Q. And it is your testimony that the general use of medicated douche powder without a prescription is least desirable?

A. Without prescription, is undesirable.

### Redirect Examination

By Mr. Rhodes:

Q. Now, Doctor, you were asked on cross examination with respect to the impression conveyed by the use of the letters "M.D." variously used irrespective of the name of the physician in connection therewith. I ask you with respect to the use of "M.D." together with the cross and the picture of a nurse on the particular product in discussion, Medicated Douche Powder, and ask you if that conveys to your mind a definite impression [234] from what the isolated use of the letters "M.D." might convey?

A. Yes, "M.D." alone would refer to a physician, that would be my first thought. Now, naturally when I would see this product, I would think it was made by the people who make the "M.D. Toilet Paper", it looks like the same thing, and my frank reaction to seeing this the first time was that this was a preparation which is trying to appeal to the lay person. Now, I am stating this as a physician. I knew that no physician was endorsing it, and naturally, as I interpreted it, my intelligent reaction to it was that it was just a method of advertising and appealing to the lay people who through

(Testimony of Dr. Norman A. David.)

ignorance may think it was endorsed by physicians. Now, that is actually what I thought. I didn't think—I don't know yet—whether or not the formula has been devised by a physician, but the inference is that it has the backing of the medical profession, and at first sight, it looks like the label I have seen on M. D. Toilet Paper, and I thought possibly it was made by the same company, just through what knowledge I have of the advertising that has been used.

Q. My question was with respect to the use of the letters "M.D." as they are used here in connection with the picture of the nurse and the cross, representing the cross used by the Red Cross, whether that would convey to the mind a different impression, a stronger impression, that it was endorsed or approved by the medical profession than if the letters "M.D." [235] stood alone?

A. Oh, yes, indeed, I think the nurse and the cross there, one would infer that it was more closely connected to the medical profession than just seeing "M. D." alone [236]

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DR. G. CARL RIENHART,

was thereupon called as a witness on behalf of the Respondent, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Levinson:

Q. State your full name?



(Testimony of Dr. G. Carl Rienhart.)

A. G. Carl Rienhart.

Q. What is your profession?

A. Physician and surgeon.

Q. Where do you maintain your office?

A. Oregon Building.

Q. Portland, Oregon? [240] A. Yes.

Q. How long have you been engaged in your profession? A. 26 years.

Q. What school were you graduated from?

A. University of Oregon.

Q. Have you had any post graduate work or any other work besides your academic training?

A. No post graduate.

Q. And what specialty do you follow?

A. Urology.

Q. Is that the same as gynecology?

A. Well, not the same; it is along that line,—gynecology is females.

Q. Has to do with female disorders?

A. Yes, sir.

Q. Now, Doctor, in the course of your professional work, have you had occasion to come across a product known as M. D. Medicated Douche Powder? A. I have.

Q. And have you in connection with your work had occasion to use that particular product?

A. I have.

Q. And can you tell us your experience in the use of this product, what you have done with it?

A. Well, with the average female coming into the office, if [241] they had leukorrhea, the whites so-called—nothing serious—we generally advise



(Testimony of Dr. G. Carl Rienhart.)

some cleansing douche powder, and tell them to use it once or twice a week for general cleanliness.

Q. And in connection with that recommendation, have you referred them to any particular products?

A. They generally ask the name of a product to use. There are several on the market, and being accustomed to the M.D., I naturally tell them to get the M. D. Douche Powder.

Q. Have you had any complaints from any of your patients as a result of their using this particular product?

A. I have not.

Q. Now this product is packed by Stanley Drug Products, Inc. Are you interested in that?

A. I am not.

Mr. Levinson: I believe that is all.

### Cross Examination

By Mr. Rhodes:

Q. You say as I understand you, Doctor, that in mild cases you recommend that the patient use this product?

A. Yes.

Q. Do you differentiate between mild cases and other cases?

A. Well, specific cases such as *Trichomonas* and gonorrhea require more powerful treatment.

Q. Would that also be true of the use of a powder for the prevention of conception? [242]

A. I would rather think so. I never thought of using this as a preventative for conception. I don't think there is any powder that will prevent conception absolutely.

## DAVID BERRY CHARLTON

was thereupon called as a witness on behalf of the Respondent, and testified as follows, being first duly sworn:

## Direct Examination

By Mr. Levinson:

Q. Give your full name to the reporter, please?

A. David Berry Charlton.

Q. What is your profession?

A. I am a Bacteriologist, operating a chemical laboratory.

Q. Where? A. In Portland.

Q. What has been your schooling? [243]

A. I took my undergraduate work in chemistry for a Bachelor's Degree and Master's Degree in Bacteriology and Chemistry, and my Ph.D. in Bacteriology and Chemistry.

Q. In what schools?

A. Undergraduate work at the University of British Columbia, Master's at Cornell and Doctor's at Iowa State.

Q. What has been your professional work?

A. I worked in the Health Department of the City of Portland from 1926 to 1928, and have been teaching at Oregon State College for about 4 years, a course in Bacteriology, and since 1934, have been operating a chemical manufacturing laboratory in Portland.

Q. You are now engaged in operating that laboratory? A. Yes.

Q. Did you at the request of the Stanley Drug

(Testimony of David Berry Charlton.)

Products, Inc. make certain tests of their product know as M.D. Medicated Douche Powder?

A. Yes, I have.

Q. Tell us what those tests were.

A. The tests I ran for them was the usual test method recommended or published by the Food & Drug Administration to determine whether such things as salves, ointments and so forth, have any bacterial static substance in them. This method was used in testing the Medicated Douche Powder.

Q. What has been the result of your test in so far as [244] Medicated Douche Powder as being antiseptic?

A. We found that the Medicated Douche Powder used in the dilution recommended on the label—we tried dilutions of one teaspoon to a pint and one teaspoon to a quart—but this particular solution had the ability to restrain the growth of the test organism under the conditions of this test and consequently we reported that it had a bacterial static or germ inhibiting substance in it, and we indicated the depth of the immersion zone around the particular outer cup, as they call it, in the method, which gives some idea whether it is weakly or strongly antiseptic or bacterial static. [245]

## CHRIS HALSTON

was thereupon called as a witness on behalf of Respondent, and being first duly sworn, testified as follows:

## Direct Examination

By Mr. Levinson:

Q. Just tell us your full name.

A. Chris Halston.

Q. What is your occupation?

A. Druggist.

Q. You have a drugstore?

A. Heathman Hotel Drug Store.

Q. Here in Portland, Oregon? A. Yes.

Q. How long have you been engaged as a druggist? A. For 20 years.

Q. You are a graduate of what school?

A. University of Washington.

Q. And you personally operate the store yourself?

A. Yes, sir, I have three of them.

Q. Mr. Halston, showing you a can of what is labelled M. D. [246] Medicated Douche Powder, state if you have ever seen similar cans?

A. Yes, I have.

Trial Examiner Reeves: Mention the exhibit number, please.

Mr. Levinson: Oh, pardon me, this is Commission's Exhibit 51.

By Mr. Levinson:

Q. Do you carry in your stores a supply of that product? A. Yes, sir.

(Testimony of Chris Halston.)

Q. Calling your special attention to the letters "M.D.", will you tell us what that means, if you know?

A. Medicated Douche Powder.

Q. When customers come in the store and ask for a douche powder, do they ask for them by various trade names?

A. Yes, they do.

Q. And have you had any difficulty with persons coming in and asking for Medicated Douche Powder complaining that it is not prescribed by a doctor,—did anybody come in and ask you if it was prescribed by physicians, or anything like that?

A. They don't ask for those things. They usually call for it by name, they say "I want a package of M.D. Powder", and they know what they want.

Q. Have you ever had occasion to sell a douche powder on prescription? [247]

A. Yes.

Q. It is common?

A. Not very often—well, it is common—I wouldn't say—at one time or another, they are recommended by doctors, then they come to the drugstore without the prescription.

Q. What is the predominance of requests on prescriptions for people who just come in and ask for a certain kind of powder?

A. The majority will come in and ask for a certain powder by name.

Q. Now, do you, in your business, regard the letters "M.D." on the can as meaning anything but the trade name?

A. No, we don't. We just consider it as the name of it.

(Testimony of Chris Halston.)

Q. Have you ever seen the letters "M.D." used on any other article of merchandise?

A. Yes, I have.

Q. Can you name some of them?

A. Toilet tissue.

Mr. Levinson: You may inquire.

Mr. Rhodes: No questions.

Trial Examiner Reeves: The witness is excused.

(Witness excused)

Mr. Levinson: If your Honor please, the respondent has three more druggists who are actively engaged in the drug business in the State of Oregon, who if called to testify in this matter, would testify substantially to the same effect as [248] the witness who has just testified, to-wit: Chris Halston, and we ask that in view of the fact that their testimony would merely be cumulative, that we will not be required to call those three druggists.

Mr. Rhodes: It is agreed by counsel for the Commission that the witnesses, if called by the respondent, would testify to the same effect as the witness who just left the stand, namely Mr. Halston, and therefore, calling them as witnesses and having them testify is dispensed with.

Trial Examiner Reeves: As I understand it, it is agreed between counsel that if these additional witnesses were called, they would give testimony to the same general effect as that given by the witness Chris Halston.



MRS. ESTELLE PENDLETON

was thereupon called as a witness on behalf of the Respondent, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Levinson:

Q. Just tell us your full name, please.

A. Estelle Pendleton.

Q. May I ask where you live? [249]

A. 7805 Northeast Sandy.

Q. In Portland, Oregon? A. Yes.

Q. How long have you lived in Portland?

A. About 17 years.

Q. What is Mr. Pendleton's occupation?

A. Post office clerk.

Q. A post office clerk for the United States Government? A. Yes.

Q. Do you have any children, Mrs. Pendleton?

A. No, sir.

Q. I am showing you, Mrs. Pendleton, a can which is entitled as Commission's Exhibit 51, and which is a product of the Stanley Drug Products, Inc., and called "M.D. Medicated Douche Powder", and ask you if you ever saw a similar can of that?

A. Yes, sir.

Q. Where have you seen that product?

A. Drugstores.

Q. Have you ever purchased a can of that product? A. Yes.

Q. Will you tell us how you happened to purchase that particular can? I mean, was it recommended to you?

(Testimony of Estelle Pendleton.)

A. Yes, I had samples of it first given to me, and I tried the samples, and I liked it very much, so I started using it.

Q. Did you ever show it to your physician or anything like [250] that?

A. No, but I asked him about it.

Q. No objection was found to your using it?

A. No, he said it was very good. I told him what I had been using before.

Q. Have you found it dependable?

A. Very much so.

Q. Calling your special attention, Mrs. Pendleton, to the letters "M.D." on the top part of the can, what does that indicate to you?

A. Medicated Douche Powder, I would say.

Q. Did it ever indicate anything else besides that?

A. No, I thought that is what it meant.

Q. Do you know of any other douche powders on the market?

A. I used to use Takara before that.

Q. In other words, M.D. indicates it is a trademark?

A. That's what I thought it was.

Q. Does it indicate to you that it is a prescription of a doctor?      A. No.

Q. Have you ever seen the letters "M.D." used on any other product?

A. Yes, I have on toilet pape.

Q. Any other product besides that?

(Testimony of Estelle Pendleton.)

A. Not that I can recall. That is the only thing, toilet paper [251] and M.D.

Q. Does the fact, Mrs. Pendleton, the product has the initials M divided by a cross in which there is a drawing of a nurse, then the letter D tend to lead you to believe that it is a product issued by doctors?

A. No, I never connected the two together.

Q. It is just common to most medical products, is that it? A. That's what I thought.

Q. In your experience as a housewife, naturally you have talked with other women about things like this? A. Yes, and recommended it to them.

Q. Do you have any interest in the Stanley Drug Products, Inc.? A. No, sir.

Q. But you have found it a very fine product?

A. I like it very much.

Q. And you have recommended it to your friends? A. Yes, I have, to many of them.

Mr. Levinson: That is all.

### Cross Examination

By Mr. Rhodes:

Q. What was the purpose for which you used it?

A. Pardon?

Q. What was the purpose for which you used it? A. A douche—sanitary. [252]

## MISS ROSE AGNES MURPHY

was thereupon called as a witness on behalf of the Respondent, and being first duly sworn, testified as follows:

## Direct Examination

By Mr. Levinson:

Q. Tell us your name, please.

A. Rose Agnes Murphy.

Q. Where do you live?

A. 5323 Northeast 14th Place.

Q. And that is here in Portland?

A. Yes, Portland.

Q. How long have you lived here in Portland?

A. 38 years.

Q. Do you have a family?

A. No, I am single.

Q. Is Mr. Murphy employed?

A. No, I am single,—I am by myself.

Q. Is it Miss?      A. Miss.

Q. Are you engaged in any occupation?

A. Nursemaid. [253]

Q. Practical?

A. Well, just carrying for children as a nursemaid, caring for children around the neighborhood.

Q. Now, Miss Murphy, will you please look at Commission's Exhibit 51 which is a can of Medicated Douche Powder and state if you have ever seen a similar product?

A. No, nothing but that.

Q. You have seen this particular product?

A. Oh, yes, I have seen that a good many times.

Q. Where have you had a chance to see it?

(Testimony of Miss Rose Agnes Murphy.)

A. In drugstores and my own home.

Q. Are you a purchaser of this product?

A. I am.

Q. How long have you used such a product?

A. Oh, five years, I would judge, as near as I can remember.

Q. Have you had satisfactory results?

A. Very satisfactory results.

Q. Do the letters "M. D." mean anything to you outside of what you see on the can?

A. No, just Medicated Douche.

Q. Did it ever mean to you that it meant Medical Doctor?

A. No, I never thought of it in that way at all. I just figured it meant what it says on the can,—  
"Medicated Douche".

Q. Just a trade-mark?

A. Just a trade-mark, yes. [254]

Q. Have you in your travels around the city or visiting other women, had occasion to discuss a product similar to this? I mean did you ever discuss what kind of douche powder women used?

A. Yes, a good many times.

Q. Have they ever mentioned this particular product?

A. Yes, I know quite a few people who use it—very dependable and very satisfactory.

Q. Have they ever commented on the fact that it was prescribed by doctors?

A. No, nobody I know ever seemed to feel that way.

(Testimony of Miss Rose Agnes Murphy.)

Q. Have you ever been misled by the letters "M. D."?           A. No.

Q. You just thought the letters "M. D." were a trademark?           A. That's all.

Q. Now, the fact that it has a nurse in the center of the letters, does that indicate anything to you?

A. No, no more than it was just a natural trade picture on the product.

Mr. Levinson: I believe that is all.

### Cross Examination

By Mr. Rhodes:

Q. You say you are not married?

A. I am not married.

Q. Were you ever married? [255]           A. No.

Q. What was the purpose for which you used this douche?           A. Douche.

Q. What?

A. A douche. I used it for a douche powder.

Q. Why did you use it for a douche powder?

A. Well, I used it at my doctor's orders. He didn't say this special one, but he told me to use one, and I asked if this was all right, and he said "yes".

Q. Did your doctor say why you should use it?

A. Just because I had a natural, very common woman's ailment is all, and he thought it would be helpful.

Q. Did you have him diagnose your case to tell you what the ailment was?

A. Yes, I certainly did.

Q. What was the ailment?



(Testimony of Miss Rose Agnes Murphy.)

A. Leukorrhea.

Q. You weren't suffering from any venereal disease, were you?      A. Absolutely not.

Q. You weren't afraid of conception, were you?

A. Absolutely not.

Q. And you didn't use it for either of those purposes, did you?      A. Absolutely not.

Q. You used it wholly as a sanitary measure? [256]      A. Sanitary measure. [257]

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DR. ALBERT HOLMAN

was thereupon called as a witness for the Commission, and after being duly sworn, testified as follows:

Direct Examination

By Mr. Rhodes:

Q. Will you give your full name to the reporter, please?      A. Dr. Albert Holman.

Q. Where do you live?

A. I live in Portland and practice in 415 Stevens Building. [259]

Q. Will you give the history of your educational background?

A. I specialize in obstetrics and gynecology and have specialized in that since 1924, when I started to practice. I am a graduate of the University of Oregon Medical School, have three years post graduate work at Cleveland in the Cleveland Clinic and

(Testimony of Dr. Albert Holman.)

Cleveland Maternity Hospital and Lakeside Hospital.

Q. Dr. Holman, this is the case in which the Federal Trade Commission has brought action against the Stanley Laboratories, Inc. and Edward Bachman, an individual, trading as Stillman Products Company and as Stanley Laboratories.

The Commission charges the respondent with making certain representations in connection with the sale of products sold by them. The charges are set out in the Commission's complaint, the indented paragraphs found in the mimeographed copy which I hand you at pages 2 and 3. Will you please examine that?

A. Yes, sir. I would rather do these one at a time, if I might. That is, discuss Medicated Douche Powder before I remark about Contra-Jel.

Q. Yes, I would be glad to have you do so, but first, I would like you to have in mind what the record shows is the formula for the powder. I have a typewritten memorandum which shows that, which I hand you. It shows that Medicated Douche Powder contains oil of white thyme, eucalyptol, phenol crystals, oil of peppermint, powdered potassium of alum, zinc sulphate [260] powder USB, boric acid powder, Oxyquinaline Sulphate 1-1000.

Trial Examiner Reeves: Off the record.

(Discussion was had off the record.)

Trial Examiner Reeves: On the record.

Q. (Mr. Rhodes, continuing) Doctor, will you take up the several representations as shown by the complaint, and discuss them? A. Yes, sir.

(Testimony of Dr. Albert Holman.)

In the first place, as I read this, I take these up as I see them, one by one. It alleges it is a dependable douche to assure personal hygiene.

Q. You are referring now to the Douche Powder?

A. Yes. There is absolutely no dependable douche for feminine hygiene. As I understand it, by feminine hygiene is meant here two things, (1) to prevent conception, and the other as a bacterial static agent, one which will kill bacteria in the vagina, and in that way limit or prevent infection, particularly of venereal diseases. At least, that is the way most women understand it.

I can say categorically that there is absolutely no dependable douche of any type, and certainly a douche which contains this formula which is made up of volatile oils,—the only real antiseptic agent in this particular douche powder is the phenol crystals,—carbolic acid crystals.

Now, its bacterial static power, its antiseptic power, would [261] depend entirely on the amount of carbolic acid, and one can state categorically that no germicide of any character, whether it is a douche or a powder or what it is used as will kill or limit the growth of bacteria unless it is so strong that it will also damage human tissue, particularly mucous membrane. I notice on the can that it is to be used 1 teaspoonful to a quart of water.

I would say that in that proportion, it would have absolutely no bactericidal power.

True, Oxyquinoline Sulphate has a spermaticidal

(Testimony of Dr. Albert Holman.)

power—that is, it will kill spermatozoa if applied properly and in direct concentration, but when you have a 1-1000 proportion in a powder, and then take one teaspoonful of that powder and put it to a quart of water, your concentration of Oxyquinoline Sulphate which is the only spermaticidal agent in this powder, you might as well be using plain water, except that it has a certain odor.

As far as this douche is concerned, towards soothing or healing vaginal mucosa, that is “hooey”. That is a thing that makes practically every scientific gynecologist get up in arms, when he sees that sort of advertising, because it isn’t true.

If a douche powder, or any agent used as a douche, is strong enough to have any effect on the mucous membrane at all, it irritates it. [262]

We see in the course of our work, many many discharges in women that we feel come from using a douche powder which has these various volatile oils and phenol.

The point I want to make is this: that the lining of the vagina and the covering of the cervix is exactly the same, it is the same type of mucous membrane, as the conjunctiva which covers your eyeball and the inner portions of your eyelid, and you wouldn’t think of using a solution like this in your eye.

Now, the reason is that the eye has a great many more sensory nerve endings in it than there are in the vagina, but there is just as much irritation to the vaginal mucosa from this sort of thing as there

(Testimony of Dr. Albert Holman.)

is in the eye. It would have absolutely no effect on cuts, sores or burns. In the first place, all medical thought is now not to use this sort of thing, any type of thing like this, on a cut, or sore or burn. Burns are treated in an entirely different manner. All this could do to a cut, sore or burn, is to do it damage. You wouldn't put this sort of thing on a burn. If someone came in my office for treatment of a burn or a bad cut, I wouldn't think of putting this kind of powder in it. It just isn't the sort of thing one would use.

The next paragraph, it says, "a germicide." Well, it is obvious to anyone who knows anything about bacteriology that it just isn't unless there is an enormous amount of [263] phenol in it, because when you consider that this whole powder is diluted one teaspoonful into a quart,—now, in a *court*, there are about 130 teaspoonfuls in a quart—so that you can see whatever is in this is diluted 130 times when it is applied as a douche.

Again it says "Effective in combatting any form of bacteria". Well, what do you mean by combatting? That is, if you mean the limiting of the growth thereof or killing them, I would be willing to state that practically any type of bacteria, any of the pathogenic micro-organisms would grow in this solution. That is, if you were to take and implant staphylococci or streptococci—any of the pathogenic micro-organisms—on a culture media and color them with a solution of this, one teaspoonful of this powder to a quart of water, you would go



(Testimony of Dr. Albert Holman.)

right ahead and get an active growth and be able to transplant it.

“In relieving women of fatigue and the annoying discharge often caused by all day standing”. All day standing, in the first place, doesn’t ever cause a discharge. If the vaginal mucosa and the cervical mucosa are normal, there is no discharge other than the perfectly normal slight secretion of mucous from the mucous membrane. If a woman has an erosion of her cervix in connection with *Trichomonas*, this won’t have any effect on it. The only thing this will do is what a douche of plain water will do. It will wash out the vagina but the Medicated [264] Douche Powder doesn’t wash it out, the water washes it out, and the woman isn’t conscious of any more discharge until the vagina fills up and starts to run out again.

Does that answer your questions?

Q. Well, further with respect to the advertisements and representations made by the respondent as shown on Commission’s Exhibit 51, you will notice, Doctor, that the letter M separated by a cross and a picture of a nurse and used together with the letter D, at the opposite end, I will ask you to state your reaction with respect to the representation made there, whether or not it indicates that some doctor or medical science has approved it?

A. Well, to me it does that. I think a person that sees that sort of thing, thinks that it is recommended by the medical profession, and in the last few years, we physicians have resented terribly



(Testimony of Dr. Albert Holman.)

everything about this M.D. business, and I would like to know if any doctor has endorsed this, and who the doctors are, and what they know about gynecology; if they have had any particular experience in the field they wouldn't endorse it, and it certainly hasn't the authorization or approval of doctors that I know anything about. [265]

Q. (Mr. Rhodes) Doctor, will you take up the product Contra-Jel, and state in your opinion as a practitioner and as a result of your contact with the public and treatment of the public, just exactly what your reaction is as to what, or what their reaction would be upon reading that.

A. Well, I shall discuss the first sentence in the indented paragraph at the top of page 3—"Contra-Jel is the highest quality vaginal antiseptic in jelly form." The crux of that statement lies in the statement "vaginal antiseptic". The average lay woman feels that any—— [266]

A. The average woman in my practice in my office when this subject has come up, and believe me, please, it comes up many many times—feels that if any medicine, douche or jelly is a vaginal antiseptic, it protects her both against venereal disease and pregnancy. Now, there are two distinct types of things. One is a bacteria and the other is a spermatozoa which comes from the male and fertilizes the egg, and an agent which is spermaticidal,—that is, which will kill spermatozoa is not of necessity bactericidal, because the sperma-

(Testimony of Dr. Albert Holman.)

tozoa is much easier to kill. You can kill spermatozoa by drying, but a great many of the bacteria cannot be killed by drying. You can kill spermatozoa by increasing the temperature of that spermatozoa only a few degrees, whereas many bacteria cannot be killed by boiling for a long period of time, so that an agent which is bactericidal is not necessarily spermaticidal and vice versa. The reason I say that is because I have women coming in my office suffering from certain symptoms which lead me to believe they have gonorrhea. I would take a slide and find that the woman had gonorrhea and inform her so, and she would say, "Doctor, I can't have gonorrhea, because I used a vaginal [267] prophylactic, I used douche powder or contraceptive jelly or whatnot." In other words, the woman has a false sense of security when she uses that type of thing. Unless it is explained to this woman, if you want a contraceptive, use such and such, it has no bactericidal power, it won't kill infection of the vagina or anything, but if used properly under proper conditions this particular contraceptive—diaphragms, or whatever it might be—will protect you in maybe 70 or 80 per cent. of cases, there is absolutely no contraceptive device excepting a rubber condom or a rubber cervix cap, which is anywhere like 100 per cent. as far as I know, because I have delivered babies after every type of contraceptive had been used, and there just isn't anything. A douche is the least preventative. Contraceptive jelly, and

(Testimony of Dr. Albert Holman.)

remember there are all kinds and of all consistencies, is the next safe on the upward step, then the protective diaphragm is the next. It is not 100 per cent., but it is the next, and the rubber condom for the man is the safest, but aside from the rubber condoms, there is no 100 per cent. safe contraceptive, so when it says here, "It is the highest quality vaginal antiseptic", it just isn't an antiseptic. [268]

"Contra-Jel is harmless, non-irritating, antiseptic and beneficial." It may be harmless and it may be non-irritating I don't know and wouldn't want to state, but I can state that it is not a vaginal antiseptic.

Q. Now, Doctor, with respect to the M. D. Supercones, you have before you the allegations in the complaint and you have before you the formula for that. Will you examine again the allegations in the complaint with respect to the advertisements or representations made by the respondent and state what your opinion is as to those?

A. "They are stable and do not lose their antiseptic strength." I couldn't say, because time would be the only thing to prove that.

"A powerful yet non-irritating antiseptic." Well, again, they are not antiseptic.

"Supercones remain in effective contact many hours". I take it that these Supercones from this are used as a prophylactic against pregnancy and against venereal disease. We know that any vaginal suppository which is what a Supercone

(Testimony of Dr. Albert Holman.)

is, and there are many of them on the market, that they are the least effective.

When I was speaking about contraceptives a while ago, I left vaginal suppositories out, because they are even much less effective than a douche, for this reason. May I draw a picture [269] on here? I am thinking in terms of a physician who understands anatomy.

A. (Continuing) The reason I drew a picture, when a vaginal suppository or a Supercone or any other is inserted into the vagina, ordinarily the women just put them in haphazardly. I know that the average woman has very little idea of the construction of her vagina or of her cervix or of her uterus I know that, because I have discussed it with hundreds, so that by pushing such a thing as this into the vagina, it may be here or they may push it away back here, but it depends entirely on the melting point and viscosity or surface tension of the cocoa butter whether it will diffuse throughout the vagina, or whether it stays in one place, and the rate at which it diffuses, so that if a woman puts one of these in her vagina as she is supposed to do before intercourse, it depends on the melting point of that particular cocoa butter, and remember that these suppositories,—I mean vaginal Supercones—vary 10 to 15 degrees in their melting points, because ordinarily when they are manufactured, the cocoa butter is put into a mold and no attention is paid to the melting point.

(Testimony of Dr. Albert Holman.)

If this particular suppository has a low melting point, and it is put in the vagina, it might have to be in there three quarters of an hour before it will become fluid enough [270] to cover the wall of the vagina if there is enough in this particular sized thing to cover the wall of the vagina.

Now, remember that the vagina when spread out is a big thing. The vulva is a compressed tube, but when you realize when it is entirely spread out it spreads out large enough so that a baby's head can come down without tearing it until you get clear down to the outside, you can see that this thing that you ordinarily picture as about twice the size of a finger in a glove or three times, maybe, is really a great, big cavity.

All right, you take this or a contraceptive jelly or anything, it will cover this, but when a woman changes position or spreads out, there are a lot of areas that haven't been covered by that, you see. The mechanics of all contraceptives are like that, that is why we say they are not particularly safe. This sort of thing is least safe.

Q. Referring to the Contra-Jel?

A. No, to vaginal Supercones, depending on where this is applied and the physical character or make-up of that particular suppository would depend on whether it had any contraceptive value, or just how much. But one could absolutely categorically say that it is not a safe contraceptive, and by no stretch of the imagination could it be called a vaginal antiseptic.



(Testimony of Dr. Albert Holman.)

Q. Now, with respect to the product Femeze, there is in [271] evidence, Doctor, Commission's Exhibits 47A and 47B, a carton in which the product is contained, and a folder with descriptive matter on it with respect to the use of it.

A. I read that while I was waiting here. That is pure bunk, that's all there is to it. All this is is a preparation of acetphenetidin and the effect on menstrual cramps or anything of that sort is absolutely nil. They make the statement in here, "It does not merely deaden your nerves with drugs or narcotics to stop the pain". That is all that it does, and it would have the same effect on a headache or a pain in the shoulder as it does on menstrual cramps.

Q. Would it or would it not relieve the cause?

A. No, absolutely not. There are some drugs which are anti-spasmodics which cause relief of contraction of the muscle. Belladonna is one, and adrenalin is another when used by injection, all the various opiates like morphine will relieve smooth muscle contraction, but acetphenetidin is not one as far as I know recognized in pharmacology.

I may be in error about that, but I don't think so. If this contained a certain amount of atropin, tincture of Belladonna, or something of that sort, it would. It wouldn't get at the cause, it would merely relieve the pain due to the spasm of the smooth muscles, but you must remember that dysmenorrhea is not that simple a thing. Ordinarily dysmenorrhea,—that is painful menstruation—has



(Testimony of Dr. Albert Holman.)

definite [272] causes. It isn't something that comes out of a clear sky, and it doesn't come because the musculature of the womb is too tight. If you realize that the uterus is a sac made up of smooth muscles with a canal running through the center—this is a side view of it—if you look from the front, it is roughly that sort of an arrangement (Doctor indicates by drawing diagram). This is the canal, and these are the tubes. It is bent in that position, but we are looking at it in that way. Ordinarily, dysmenorrhea comes from one of three main sources, either due to infection, due to congenital malformation, as a stricture, a narrowing, a tightening, which is a scar tissue thing, it isn't that the muscle is too tight, and there is a very definite reason for it. Either there is a stricture there which impedes the flow of blood, or the uterus instead of being in its normal antverted position, it is back like that in what we call a retroverted position, so the uterus fills up from blood and has to empty this way, and the muscle contracts to force the blood out, and we visualize these very often by X-ray, by the injection of an iodized oil and we can see these inter-uterine polyps, they are small growths, and hang down in the uterus and obstruct this canal. Those are the three most common causes of dysmenorrhea. There are many others. Worry of a woman—well, what I am trying to say, there are many scientific reasons for dysmenorrhea, but if you take all women who suffer from painful menstua-

(Testimony of Dr. Albert Holman.)

• tion [273] and lump them into a group, the three I have told you would cover probably 85 per cent. of all dysmenorrhea. Now, such a thing as Femeze won't get at the cause of the dysmenorrhea at all. It won't replace the uterus, cure the stricture, or remove the cause.

Q. Doctor, will you state, please, from your practice and experience, and your knowledge of human anatomy whether or not the layman is capable of diagnosing a complaint from which he feels he is suffering?

A. Now, I would say that they can't. I would say, strangely enough, when a doctor gets sick, he can't.

It is almost impossible for any individual unless he has a broken leg and sees that the leg is broken, or something like that, but for the average woman to determine why she is suffering from the symptoms she has given, or the ailment, let us say, from a vaginal discharge, or let us say a backache or dysmenorrhea, it is impossible for the individual to tell, because, in the first place, she has to interpret her own symptoms without knowing what organs she has even to be involved. If you ask the ordinary individual "Where is your womb?" she doesn't know the difference between her womb and her vagina. If you ask about her tubes, or ovaries, many women come into my office and say, "I have a sore ovary." They just know they have two ovaries, one on each side, so that any pain is ovarian. Any discharge, most women

(Testimony of Dr. Albert Holman.)

think is due to fatigue or overwork [274] or something of that sort, when we know that plays no part at all. The reason that doctors, particularly with regard to female complaints, are so against self-diagnosis and self-treatment, is because we learn by bitter experience that women will treat the beginning symptoms of cancer of the uterus or cancer of the cervix which start, the first thing, when a woman notices a discharge, then from time to time she will begin to notice discharges, blood maybe one day, and another a month from now, and that will get a little more profuse. The average woman has a great many reasons in her mind why she is suffering from this, and the reason doctors are so much against self-medication is because a woman will go from one douche powder, or one thing they can instill themselves to another until the beginning cancer has become inoperable.

We see them all the time, and had we had the chance to see that woman six months before, her life would have been saved, but because she has gone ahead and treated herself so long, the metastasis has occurred and the case is inoperable, and the same way with regard to infections of the vagina, for instance, venereal infections, a woman will have a discharge and she will think it is due to overwork or standing on her feet or whatnot, and she will go along trying to treat that herself with a douche, and instead of curing it, she has spread it, and by the time the doctor sees her, she has her tubes all inflamed and many times they have to be re-

(Testimony of Dr. Albert Holman.)

moved, where if she had gone to [275] a doctor in the first place, and he could have treated her correctly, she wouldn't have had that trouble, so the reason the medical profession as a whole is against self medication is that the patient can't tell what is wrong and does herself many times irreparable damage by trying to treat herself.

Q. By the delay? A. By the delay.

### Cross Examination

By Mr. Levinson:

Q. Before being called as a witness in this case, had you ever heard of M.D. Medicated Douche Powder?

A. I had seen it in the windows down at the Post Office Pharmacy when I have stopped there to mail letters and I thought it was an awful lot of nerve.

Q. When you saw the "M.D." it incensed you because you are an M.D. and that can is not?

A. It didn't incense me. It just seemed to me it was very poor taste.

Q. Have you ever seen the letters M.D. used on any other products?

A. I can't recall whether I have or not.

Q. Have you ever seen them used on toilet paper?

A. I don't know. I may have. Quite possibly I have.

Q. Have you ever seen them used on sanitary napkins? [276]

(Testimony of Dr. Albert Holman.)

A. Yes, you bet I have.

Q. And of course, you know that doctors don't prescribe things like that? A. Yes.

Q. Now, the letters "M.D." in and of themselves without anything with them, just the letters "M.D." even divided by a nurse, does that indicate to you that it is a medical term?

A. It wouldn't indicate to me it is a medical term, because I know darned well it isn't. Does that answer it?

Q. Now, the time that you saw this particular product is when you saw it in the drug store?

A. Yes.

Q. You know now, I guess, in a general way the formula for this product? A. Yes.

Q. Now, I have here the formula, and I will ask you first, generally, do you have an objection to a woman using a douche powder?

A. Do you say, do I have an objection to it?

Q. Yes.

A. Yes, primarily and per se I advise my patients against douches because douches are not physiological. You don't douche out your nose or your eye or your ear every day, nor your rectum, and the vagina is just as physiologically normal a body cavity as any other body cavity, and I think that I can [277] say this truthfully, that practically every good gynecologist advises his patients against douches rather than to prescribe them to use douches, because we feel they are definitely harmful.



(Testimony of Dr. Albert Holman.)

Q. Would you say a preparation containing boric acid is objectionable as a vaginal douche?

A. I would say categorically that any vaginal douche is not a good thing for the patient to use.

Q. If I should go along and ask you questions about each specific——

A. I would pick out the ones in this that are most objectionable to me, if that is what you are trying to get at.

Q. Would you do that for us, Doctor?

A. Eucalyptol, phenol crystals and the potassium alum, and the zinc sulphate, those are very irritating.

Q. To you, they are objectionable?

A. Yes.

Q. Can you tell us what, in your opinion, is the meaning given by your profession to the word “antiseptic”?

A. It means exactly what it says. “Anti” is against, and “septic” is sepsis,—infection,—it means “against infection”.

Q. Does it mean that the antiseptic has to kill germs?

A. That is the construction that I would certainly put on the word, or I think any other person—antiseptic is against sepsis. [278]

Q. What is the definition given to the word “germicide”?

A. Germicide, to kill germs.

Q. Can a product be antiseptic and not germicidal?

A. I doubt it.



(Testimony of Dr. Albert Holman.)

Q. Your answer is that you doubt there is any difference between the two words?

A. Well, they are not—I would say roughly the two words mean about the same thing. That is, they do to me. I don't know what the definition is in the dictionary.

Q. Are you acquainted with the Year Books of Obstetrics and Gynecology edited by Delee and Greenhill?

A. Yes, I am quoted in them almost every year.

Q. I find on pages 319 and 320——

A. What year is that?

Q. The year book 1937,—a statement which I am going to let you read.

A. All right, and now let me qualify this Year Book. This Year Book is a compendium, an abstract of the various articles which have appeared in the medical literature of that particular year 1937.

Trial Examiner Reeves: Off the record.

(Discussion held off the record.)

Trial Examiner Reeves: On the record.

A. (Continuing): This is purely what it is supposed to be, that is why they call it a Year Book, it is merely an [279] abstract of various articles. He doesn't say what these douches are used for. You asked me to read this?

Q. Yes, I wanted you to familiarize yourself with that particular portion of the book. Now, you have done that?

A. Yes.

(Testimony of Dr. Albert Holman.)

Q. Now, you stated that that is just this man's opinion?      A. Yes.

Q. Referring to that man, it is Doctor——

A. Karnagay, the University of Texas School of Medicine.

Q. After all, medicine is just one man's opinion against another's?      A. Surely.

Q. Isn't that true?      A. Yes.

Q. What you have told us today is your opinion?

A. That's it.

Q. Other doctors may have other opinions, and naturally we are all proud of our opinions, and you have given us your opinion this morning?

A. Yes.

Q. Isn't that true?      A. Yes.

Q. Now, according to Dr. Karnagay, he doesn't seem to have any particular objection to the use of douches, does he?

A. The point of this particular article as I see it, is that [280] they try to get a douche of a certain PH used.

Q. Yes, and the purpose of that is to raise the acid condition of person, isn't that true, as distinguished from the alkaline condition?

A. The higher the PH the lower is the acidity.

Q. All right, which is preferable?

A. Well, preferable for what?

Q. For the woman?

A. Well, it doesn't make any particular difference what the acidity of her vagina is as long as she is normal. If she has some particular infection

(Testimony of Dr. Albert Holman.)

which grows best in an alkaline vagina, if you believe in that particular type of treatment, you will try to get that vagina more acid, and conversely, if you have an organism which grows the best in acid, you try to get the vagina more alkaline, if you use this type of treatment. I don't use it, and I don't know anybody among my personal acquaintances who does.

Q. I believe you testified that you recommend against a woman using a douche? A. Yes.

Q. Indiscriminately?

A. Unless there is some very definite reason for it. I prescribe douches at times, but ordinarily advise against them.

Q. Now, at this particular douche powder is harmless and may yet be soothing and cooling like a mouth wash or after shaving [281] lotion, is there any particular objection to a woman using it?

A. If it is harmless? What do you mean by harmless?

Q. Assume a woman enjoys a douche just like a man might enjoy gargling his throat every morning, and it has no effect except to make them feel psychologically better, is there any objection to a douche powder?

A. If it is—let's get this straight—if it has no effect, if that douche powder has no effect, I mean by that, if it has absolutely no irritating effect on the vaginal mucosa, if it has no effect except on that woman's psychology, I certainly have no objection providing she will use water which is clean. The

(Testimony of Dr. Albert Holman.)

reason I advise against douches and douche powder is because the douche powder ordinarily will irritate and because the woman frequently introduces infection merely by taking the douche which wasn't there beforehand, that's all.

Q. But if from a psychological standpoint the effect upon a woman of the use of a douche——

A. If the only effect was absolutely psychologic and had no effect on her vaginal mucosa, I would say of course I don't object.

Q. There would be no objection at all?

A. No.

Q. Like a man using a lotion for after shaving, if it makes him feel better, there would be no objection?

A. I can't see that there is any connection between after- [282] shaving lotion and a douche.

Q. Suppose it was a vaginal douche of just plain water would there be any objection to that?

A. Yes, I advise against it only because of the danger of plain water introducing infection into the cervix, because I have seen it happen.

Q. Now, Doctor, you stressed in your direct examination your objection to persons engaging in what is known as self-medication? A. Yes.

Q. And of course, most doctors are opposed to patients trying to be their own doctor? Most doctors are opposed to a patient taking care of himself medically, isn't that true? A. I imagine.

Q. Because the patients use the wrong cure for——

(Testimony of Dr. Albert Holman.)

A. Because they ordinarily make the wrong diagnosis, and because they know nothing about the cure.

Q. Yes, in other words, you feel that if a patient has any physical ailment, the first place to go is to a doctor?

A. I think so.

Q. And not to a drugstore?

A. I think so.

Q. And you are naturally interested in seeing that a product such as M. D. Medicated Douche Powder is not sold in the drug stores? [283]

A. No, I am not. I don't care whether they sell Medicated Douche Powder or not. I don't care what they sell. That is up to the individual. The only thing I am testifying to is my opinion of this particular advertising. I don't care if they sell ten barrels of that a day, it is nothing to me.

Q. As a doctor, aren't you interested in seeing that women do not use these products?

A. I think they are bad for women, but I certainly am not going to get myself stirred up about it.

Q. As a member of the medical profession, you are not interested in preventing the distribution and sale of douche powders to the public?

A. Not particularly, no.

Q. It makes no difference to you. Well, Doctor, is a douche powder helpful in some or any gynecological conditions?

A. No, a douche powder is not.

Q. Would a douche powder prescribed by a doctor be helpful?

A. I don't think so.



(Testimony of Dr. Albert Holman.)

Q. As I understand your testimony, you are generally opposed to the use of douches?

A. Well, remember—don't get the idea—I don't want the idea conveyed that I have a quarrel with douches, because I haven't. I prescribe them lots of times, but I do think that indiscriminate douching by women causes trouble and it isn't just a matter of what I think. I have a lot of reason for it. [284]  
I see these patients.

#### Redirect Examination

Q. (Mr. Rhodes): Your objection to the use of douche powders then is based upon your experience?

A. Yes.

Q. And it has been brought to your mind that the use of douche powders indiscriminately has delayed the proper treatment for a particular complaint because of the ignorance of the individual?

A. Yes. And let me say this: I taught for many years in medical school, in the Dispensary, and during that length of time, I used to see many, many women, that is, many more than any man could see in his own office. We went up there twice a week and would see anywhere from 40 to 70, and in the old days they used to try to treat certain types of vaginal discharge—remember that discharge is only a symptom—but they used to try to treat the lesions that caused the discharge by all types of medication, applying them with sticks and by a douche and that sort of thing, and they found years ago that that wasn't the way to treat it, and



(Testimony of Dr. Albert Holman.)

that it did harm, so that it has been discarded and it is out. [285]

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DR. THOMAS R. MONTGOMERY,

was thereupon called as a witness by the Commission and being first duly sworn, testified as follows:

Direct Examination

By Mr. Rhodes:

Q. Will you give your full name to the reporter?

A. Thomas R. Montgomery.

Q. What is your business, Doctor?

A. I am a Urologist.

Q. Will you state what a Urologist specializes in?

A. A Urologist specializes in diseases of the genito-urinary system.

Q. How long have you practiced your specialty of Urology?

A. I have practiced this specialty for  $2\frac{3}{4}$  years in Portland.

Q. What is your education and training with respect to medicine?

A. I finished medical school here in 1932 at the University of Oregon and spent a year then as an interne and a year as a resident in pathology and then was at the Mayo Clinic four [287] years and a half in urology.

Q. Doctor, this is a case of the Federal Trade Commission against Stanley Laboratories, Inc., a corporation, and Edward A. Bachman, an individ-

(Testimony of Dr. Thomas R. Montgomery.)  
ual, Bachman trading as Stillman Products Co. and as Stanley Laboratories. The Commission has charged the respondent with making certain representations which it contends are deceptive and misleading. The representations with respect to the products which are sold by the respondent are set out in the complaint, in the indented paragraphs as shown in the mimeographed copy of the complaint which I hand you, beginning at page 2 with the item 1, as to Medicated Douche Powder. I ask you to read that, please, and familiarize yourself with it.

A. This represents——

Q. It represents the representations made by the respondent with respect to their product.

A. I see.

Q. I now hand you a typewritten sheet on which is set out the formula for that product, and ask you to examine that, that is for Medicated Douche Powder, M. D. Medicated Douche Powder, and bearing in mind the formula, I will ask you to examine the representations made with respect to its uses and efficacies, and state please in your opinion whether or not those representations are borne out by your experience and practice?

A. I would say “no”. [288]

Q. Now, will you take them specifically and state specifically with respect to each of the several representations whether or not they are truthful and borne out by your practice and experience. Take for instance, the first statement, “A valuable prescription for discriminating women.”

(Testimony of Dr. Thomas R. Montgomery.)

A. Well, I would take exception to that statement, of course. It may have some beneficial effect from its chemical cleansing action, but I think beyond that it probably is not——

Q. As a germicide in the destruction of venereal disease germs, or in the prevention of conception, would that be effective?

A. I think it wouldn't be dependably effective at all.

Q. Is there any douche powder or vaginal suppository or form of Contra-Jel or any of those things that is wholly effective?

A. No, there isn't; there is not.

Q. I direct your attention to Commission's Exhibit 51, upon which is depicted the picture of a nurse, the head of a nurse in a cross, with the letters M. D.,—M. before and D. after, and I ask you to state as a result of your practice and experience whether or not that is in any way deceptive and misleading?

A. I think it definitely would be considered misleading to the average person who sees anything like that. I think they would be led to suppose that that was endorsed by or produced by an M. D. and sponsored by the medical—members of the [289] Medical Society. I think that is deceiving.

Q. As a result of your contact with the public, and the treatment of patients coming to your office, do you know whether or not any of them prior to their consultation with you, had used douches or medicinal preparations for female trouble?

(Testimony of Dr. Thomas R. Montgomery.)

A. Yes, many of them had used douches.

Q. You learned that through them?

A. Through them, yes.

Q. Their statements to you? A. Yes.

Q. As the result of the use of douches, had their ailments been alleviated, or had they been aggravated?

A. No, I think they had not been alleviated. Whether or not it would relieve depended on the condition for which they happened to use the douche.

Q. Is the average woman or layman capable of diagnosing his own condition, determining what he is suffering from? A. No.

Q. Would a physician recommend any treatment until he had examined a patient?

A. They should not.

Q. Now, with respect to item No. 2, which is designated Contra-Jel, would you examine the statements, the representations made by the respondent with respect to that product and state whether or not they are in any way deceptive in your [290] opinion? The formula for the product is contained in the memo handed you?

A. Well, I think that it is deceptive to state that this is the highest quality of vaginal antiseptic.

Q. From examination of the formula, would you say that it was or was not the highest quality of vaginal antiseptic?

A. No, I would say that it is not antiseptic to any degree.

(Testimony of Dr. Thomas R. Montgomery.)

Q. Would that have the power to destroy syphilis?      A. No.

Q. Or gonorrhea germs?      A. No.

Q. Would it have the power to destroy spermatozoa and prevent conception?

A. Only very slightly.

Q. Would it be wholly effective?

A. Not, not wholly effective ever.

Q. Is there any Supercone or such product known to you in the medical profession that is dependable?      A. No, I think there is none.

Q. And that is true, would you say, of Contrajels or jellies that are used by women as a means of protection?

A. Yes, as a contraceptive, yes, I think that is generally agreed to be true, that there is no dependable contraceptive jelly.

Q. Now, with respect to the item 4, "Femeze", we have here [291] Commission's Exhibits 47A and 47B, A being a carton in which the product is packed, and upon which is contained the following statement: "Contains acetphenetidin". Femeze appears to be from the tablet that was contained in the package, a tablet to be used according to the directions. Would you say that that tablet would afford relief from the pains accompanying menstruation?

A. Well, it is conceivable that it might possibly just as aspirin would.

Q. Would it cure or relieve the cause of it?

A. Not at all.

(Testimony of Dr. Thomas R. Montgomery.)

Q. It wouldn't affect the cause?

A. No, not at all.

Q. It is stated with respect to that, that it will bring about relief in a short time by relaxing the contracted womb muscles; would that be true or not?

A. It shouldn't be true. It should be untrue, as far as I know, this drug, if that is all that it contains, acetphenetidin has no effect on the muscles of the uterus at all.

Q. How does it affect one?

A. It acts through the central nervous system just as aspirin does, on the higher nerve centers. [292]

#### Cross Examination

By Mr. Levinson:

Q. Have you ever seen this product, Medicated Douche Powder, before today? A. No.

Q. You have never heard of it before?

A. Not to my knowledge.

Q. And Doctor, would you say that the letters M. D. as indicated on Commission's Exhibit 51 standing alone, give you the impression that it is a doctor's product?

Mr. Rhodes: I object to that question, if your Honor please, because the witness has not testified that these letters M. D. standing alone give any impression. He has testified with respect to the whole make-up of the advertisement as represented on the product.



(Testimony of Dr. Thomas R. Montgomery.)

Mr. Levinson: Well, I will reframe the question.

Q. (Mr. Levinson) Doctor, looking at this exhibit, Commission's Exhibit 51, would you state that the way this is made up, gives you the impression that it is compounded or prescribed by a doctor of medicine?

A. I believe I made that statement, yes, that the insignia suggests that is a medical product.

Q. I see. Does that mean because you see the letters "M. D." there, is that the reason?

A. I assume that is why those letters are there. [293]

Q. If you use the letters "M. D." without any name, does that indicate Medical Doctor, necessarily?

A. It often does to me, I think commonly does to me.

Q. If you saw "Baltimore, Md.", would that mean Baltimore, Doctor?

A. That isn't capital M.D.; it probably wouldn't.

Q. Supposing it was the same type of letters all the way through from Baltimore over to M.D., would you think that Baltimore was a Doctor?

A. Only if it were on a package of medicine.

Q. But then you would have to see the name first, plus the M.D., wouldn't you?

A. I think that would depend on the circumstances.

Q. That is true in all cases, the letters themselves depend primarily upon the circumstances, and the place, and everything that one would bring

(Testimony of Dr. Thomas R. Montgomery.)

to one's mind in trying to connect up some letters that he saw and what the letters meant, isn't that necessarily true? Do you get my question?

A. I think so.

Q. And now, Doctor, M. D. in this case could probably mean Medicated Douche, couldn't it?

A. Yes, that is conceivable, that's right.

Q. Now, the cross itself doesn't necessarily have application to doctors, does it?

A. Not the cross; it applies to Red Cross. [294]

Q. And J & J Bandages?

A. Yes, I believe they use that insignia.

Q. And adhesive tape? A. Yes.

Q. And cotton. Now, isn't it true, Doctor, that in the medical field which includes doctors and drugs and the like, there are certain symbols that have come to be used as indicating that they are drugs or doctors or things relating to that field that we are interested in, isn't that true, that there are certain things, for example, the cross with a nurse in it would indicate the product had something to do with medicine or doctors or drug or bandages,—anything relating to what a person may use on his body? A. Yes, that is true.

Q. Now, Doctor, do you have any objection to a woman using a douche powder?

A. I have no objection to a woman using a douche powder upon my suggestion.

Q. Upon your suggestion?

A. That's right.

(Testimony of Dr. Thomas R. Montgomery.)

Q. And is there any particular harm in a woman, upon your suggestion, using it and continuing to use a douche after she has left your care, you might say?

A. Yes, oftentimes it is objectionable to continue to use a douche. [295]

Q. It is. Now, you are familiar with the formula of this particular product? A. Yes, sir.

Q. Is there any particular objection to the use in a douche of boric acid? A. No.

Q. Is there any objection to the use of potassium alum? A. Not to my knowledge.

Q. Is there any objection to the use of phenol?

A. Sometimes, yes.

Q. And how about eucalyptol?

A. Your question is, is there any objection?

Q. Is there any objection to putting that in a douche? A. No.

Q. And oil of white thyme, is there any objection to that? A. No.

Q. Or oil of peppermint?

A. No objection.

Q. Or Oxyquinoline Sulphate? A. None.

Q. Or zinc sulphate?

A. No, not to my knowledge.

Q. Now, Doctor, if the use of a douche by a woman produced a psychologic effect on her, and was not harmful, would you have any objection to her use of it? For example, suppose I like to [296] gargle my throat in the morning. It doesn't do a

(Testimony of Dr. Thomas R. Montgomery.)

bit of good, it never gets at the cause, but I feel better, is there any objection to my gargling?

A. Only in so far as you might depend upon the gargle, or she might depend upon the douche without actually finding out whether there was anything wrong with her female tract or with your throat.

Q. Suppose it just had a psychologic effect on her, made her feel it was soothing and cooling.

A. I think that is a total loss as far as medical care is concerned.

Q. Assume it is not medical care, that she just psychologically likes a douche because it is soothing and cooling, is there any objection to that?

A. Not as long as it doesn't cover up something else. Although it is objectionable, as I said a while ago, to use douches repeatedly a long period of time, composed of drugs, I think it would be improper to use sodium bicarbonate in a douche or salt water indefinitely, that even that is objectionable, because it washes away the normal secretions.

Q. But there are medical authorities that have suggested to certain women who have certain gynecological conditions the use of a douche?

A. That is right.

Q. You yourself prescribe douches if the occasion calls for it?[297]

A. Yes, sir. [298]

J. C. ANDERSON

was thereupon sworn as a witness on behalf of the Commission, and being first duly sworn, testifies as follows:

Direct Examination

By Mr. Rhodes:

Q. Will you give your full name to the reporter, please?      A. J. C. Anderson.

Q. How long have you lived in Seattle?

A. Well, this last time, about 4½ years.

Q. You have lived here prior to that time?

A. Yes, sir.

Q. What is your business?

A. I am Manager of McKesson-Robbins Wholesale Drug, Seattle Division. [301]

Q. In the course of the business of McKesson-Robbins, have you had occasion to handle products of the Stanley Laboratories?      A. Yes, sir.

Q. Particularly the product such as Commission's Exhibit 51?      A. Yes, sir.

Q. M. D. Medicated Douche Powder?

A. Yes, sir.

Q. Mr. Anderson, what in your opinion is the significance of the letters "M.D." the picture of a nurse's head within a cross as shown on that exhibit?

A. Well, I am of the opinion that it has—anything with a makeup like that, signifies purity or has sort of a professional atmosphere.

Q. By "professional" you mean the profession to which the doctors are attached?

A. Or a nurse, or something of that kind. [302]

## HENRY M. WHITE

was thereupon called as a witness, and being first duly sworn, as examined and testified as follows:

## Direct Examination

By Mr. Rhodes:

Q. Will you give your full name to the reporter? [303]           A. Henry M. White.

Q. Where do you live?           A. Seattle.

Q. How long have you lived in Seattle?

A. Since 1913.

Q. What is your business?

A. In charge of the Federal Trade Commission in this district.

Q. How long have you been in that position?

A. Since January, 1934.

Q. What was your business prior to that time?

A. Attorney.

Q. Did you practice in the State of Washington?

A. Yes.

Q. In the course of your duties in the investigation of the Stanley Laboratories, did you ever have occasion to interview Mr. Edward A. Bachman?

A. Yes, I interviewed him on three different occasions.

Mr. Levinson: May I ask the witness to fix the date? He said 1938.

By Mr. Rhodes:

Q. Yes, can you fix the date?

A. I can, from my report of my interview.

Q. Yes, refer to it.

A. The first as March 16, 1937; the second was



(Testimony of Henry M. White.)

April 26, [304] 1937, and the third was May 26, 1937, and then I called there later after that, but I saw someone else I think as I remember it.

Q. What was the purpose of your interviewing Mr. Bachman?

A. I was investigating a complaint against the Stanley Laboratories.

Q. Did you visit Mr. Bachman at the office of the Stanley Laboratories?

A. Well, at his drugstore.

Q. Where was that, in Portland?

A. In Portland, just across the street from the post office on Broadway.

Q. Will you state the substance of your interview with Mr. Bachman?

Mr. Levinson: Just a moment, please. If the Examiner pleases, the respondent will object to the form of the question because, as I understand it, he is calling this witness as an impeaching witness and in order to impeach the witness Bachman, you would have to direct his attention to the specific question he asked Mr. Bachman and to which Mr. Bachman replied, and then he can ask this witness as to what the testimony was, or what the evidence is, instead of asking him as he is doing now, what the nature of the conversation was.

Trial Examiner Reeves: I take it that the pending question is preliminary in its nature. The objection is overruled. [305]

The Witness: What was the question?

(Last question read aloud by the reporter.)

(Testimony of Henry M. White.)

A. Well, I would want to refresh my memory from my—I took notes of the interview and came home to the office and dictated the interview to my stenographer.

Q. From your notes? A. From my notes.

Q. From your notes made at the time?

A. From my notes made at the time after that, and it covers several pages.

Q. Was that report submitted to the Federal Trade Commission? A. Yes.

Q. And that report was dictated from your notes? A. Yes.

Q. Proceed.

A. This is March 16, 1937. Edward A. Bachman, firm name Stanley Laboratories,—do you want me to read the entire interview or the report of my interview?

Q. State what the substance of the report was that you submitted, what was the substance of the information gathered from Mr. Bachman in that interview?

A. Well, I asked him when I went in, to show me his laboratory, and he said, “Well, it is just where you are standing”, and I was then standing at the counter, near the northwest corner of the building. The corner of the building next to the [306] post office.

I then asked him how many employees he had in the laboratory, and he stated that there was none in the laboratory, that those who worked at the cigar counter and the food counter, and waited on

(Testimony of Henry M. White.)

the drug trade, were employees in the laboratory, and he stated that there was no separate department for a laboratory in the drug store, and he stated that there was no equipment such as a microscope or sterilizing equipment of any kind. Then he produced from under the counter a package of Contra-Jel and stated the product was put out by his firm, and it had with it a glass tube which could be screwed into the end of a tube containing the Contra-Jel and thus forced through the tube into the necessary parts of the woman. That was exhibited to me at that time, and he gave me a leaflet descriptive of this product, and that leaflet was headed, "For the Physician's Information", and then he gave me the other products that were put out by the Stanley Laboratories.

Q. What products were they?

A. Well, now, he handed to me a sample package of another product, called M. D. Medicated Douche Powder, and that was put into the record, then there was a leaflet descriptive of this product that was made a part of the record, then Mr. Bachman handed to your examiner two pamphlets entitled "A valuable prescription for discriminating women". That was [307] the heading of it, which was made a part of the report, and another pamphlet descriptive of another product sold by Stanley Laboratories marked Bachman Exhibit 7. This was a product known as Femeze tablets, and he stated that was manufactured by the Norwich Pharma-

(Testimony of Henry M. White.)

ceutical Company of New York City, but he didn't have a sample of that product.

Then the exhibit 8 was an advertisement—an advertising prospectus relating to M. D. Medicated Douche Powder, and other things, newspaper mats for advertising purposes. He stated that he was not an organized company, that he himself was the sole proprietor, and he stated that he had exclusive rights to sell the product—all the products being put out under the name of Stanley Laboratories, and no one else had any interest therein.

Then he stated that Stanley Laboratories had no separate room and had no other place in which it carries on the work of putting up those powders than in the drug store mentioned and prescribed herein.

Then I asked him why he used the words "Stanley Laboratories" and he stated he did so simply because he wanted the public to draw the conclusion that his products were manufactured in a laboratory and he thought it would be a better selling name than to use his own individual name. He stated that there was no doctor in his employ and no chemist in his employ. All the work was done by himself and his [308] employees in the drug store.

Then he stated that he has been selling the product since February 5, 1936 with exception of the Contra-Jel, which he was selling since 1933.

Then he stated that he did not sell a great amount at retail, but most of his sales were made through

(Testimony of Henry M. White.)

drugstores, his sales being confined to the states of Washington, Oregon, California and Idaho, and last year he stated that he sold—this was 1937, when he was testifying—he sold \$5,000 worth of the product. That he had stocked up quite a number of drugstores, and his sales this year had not been so much up to the time—had amounted to approximately \$300—but he was going to put on a campaign to help sell the products, and knew he could get a big seller from the success he had so far.

Then Mr. Bachman stated he simply assumed the name M.D., it was suggested to him by an advertising man, and the argument used was that it would lead the public to believe that it was medicated, and that the picture of the nurse on the label would indicate cleanliness, and he wanted to convey the impression, without baldly stating the fact, that the product had been endorsed by the Medical Association. He stated that he had the subject examined carefully by his attorney, who advised him that he had the right to the use of the words and designation “M.D.” He then stated he had made application [309] for the trade-name and hoped to be granted a copyrighted name.

Q. Now, on his subsequent interview, will you give us the substance of the interview had by you with him later, the next interview?

A. April 26, 1937.

Q. Was that interview also held in his place of business?

A. In his place of business. I then explained



(Testimony of Henry M. White.)

that I wanted to verify his former statement and to clarify some of it. I told him that I couldn't understand how the Stanley Laboratories without any equipment or room especially provided for that purpose could manufacture, pack, seal and label and distribute an article such as Contra-Jel. I called Mr. Bachman's attention to the fact that it would take pressure of some kind to fill a tube of Contra-Jel and some machinery would have to be provided for that purpose, and I wanted a more complete statement.

Mr. Bachman objected to any further interview, and stated that he was busy, and asked if I could return at some other hour. I told him that my time was limited, and that I would not be back in this part of the city, and that if it was not too inconvenient, I would like to have an interview at the time. He then submitted to the interview.

Mr. Bachman reversed his statement at the former interview, and admitted that he did not put up the products sold by him. The ingredients of Contra-Jel he stated are made by the [310] Holland-Ranton Company of New York City, that it was put up in New York and then shipped to his store in Portland unlabelled, and the informant places the label thereon and distributes to his customers.

I called Mr. Bachman's attention to the fact that this statement was exactly opposite to his previous statement, and he stated that he did not understand what I wanted the information for. I asked him how he put up M. D. Medicated Douche Pow-



(Testimony of Henry M. White.)

der, and he stated the ingredients contained in that powder were supplied by the Blumaeur-Frank Drug Company, a wholesale drug house. Informant buys them in wholesale quantities, and packs them in cans. The ingredients came to him already mixed, so all he had to do prior to selling, is to pack the product. I asked him how he handled the Femeze product, and he stated that he does not manufacture that in any sense of the word and does not put it out as his own product. It is sold to him by a New York Company and he simply represents the company as agent and it is consigned to him and sold by him to the public, acting as agent for the company in New York. He has nothing to do with measuring out the product or weighing it, and does not know the ingredients, and has no information as to the product whatsoever.

I then asked Mr. Bachman if there was any other product he put out and at first he refused to answer, then he admitted that he put out a product known as M. D. Supercones. This [311] product he stated was manufactured by the Norwich Pharmaceutical Company of New York City and he acted solely as distributor, and uses his own label of M. D. I asked him for a sample product, for the record, and he stated that he would sell me a box, but I told him that I did not feel inclined to buy it, and said that he should supply it. He gave me a box of M. D. Supercones, and same was made part of the record.

Mr. Bachman reiterated the statement that he had

(Testimony of Henry M. White.)

no measuring equipment, and not separate room for his laboratory.

He then stated that if the Federal Government was going to interfere with his business, he wished they would do so at once and let him alone, that he wanted to put on an advertising campaign, and did not feel justified in doing so if he was going to be interfered with.

Q. Did you have a further interview with Mr. Bachman?

A. Yes, on May 26, 1937, I asked Mr. Bachman to tell me where I could locate the Stillman Products Company, the company that advertised and sold Femeze mentioned and described in Bachman Exhibit 7, and he stated the company is out of business, that it was operated by a doctor not known to him, nor does he know the former address of the company.

He stated that Stillman Products turned over all of its products to him to sell on consignment. He did not pay for the goods, and has sold but little of it. He stated that if it proves to be a good seller, he has the formula and right [312] to manufacture and sell it, that he has made no accounting to the Stillman Products Company, but the stuff is lying in his drugstore.

He then stated that he did not manufacture or put up in the original package, any of the items mentioned and described therein, advertised as being manufactured by, sold by and distributed by Stanley Laboratories.

(Testimony of Henry M. White.)

He called me into the little booth used for the filling of prescriptions—that is, in connection with the drugstore. There was a girl therein wrapping packages of Contra-Jel in cellophane. He stated that the work consisted of all the work done by the Stanley Laboratories as far as it affected Contra-Jel, and the other products are wrapped by the manufacturers, and he stated that in his interview heretofore, he gave me the names and addresses of the companies who manufactured and put out the products.

Mr. Bachman then stated that he was not clear about the question of advertising and as to his legal rights and asked that I interview his advertising manager and his attorney.

Q. Did you examine the premises to see whether or not he had the equipment of a laboratory?

A. Yes.

Q. Did you find any such equipment?

A. I found nothing there except what you generally find in the back room of a drugstore. [313]

Q. You mean a retail drugstore?

A. Yes, retail drugstore.

Q. Did you ask to see the laboratory?

A. Yes.

Q. What was his reply?

A. His reply was, "Well, you see it right where you are standing now." That was on my first visit.

Q. Did you ask how many employees he had in his laboratory?

A. Yes, I asked particularly the employees in

(Testimony of Henry M. White.)

the laboratory and then he spoke about the fact that the girls who waited on the—he runs a restaurant in connection with his drugstore, and those girls and those who waited on the customers at the cigar counter, and other places, were employees.

Q. When you asked as to how many employees were employed in the laboratory, what was his reply?

Mr. Levinson: He answered that before.

Mr. Rhodes: I am asking him the specific question.

A. That those who work at the cigar counter and at the food counter and who wait on the drugstore are likewise the ones who work in the laboratory, and I saw, I think, three or four girls waiting on the customers, and I know there were one or two men there, and I saw one girl upstairs—that was later—and Mr. Bachman was there, too.

Q. Did he state in response to your inquiry that there were none, when you asked him the question as to how many [314] employees he had in his laboratory?

A. Yes. He didn't employ anyone in the laboratory and had no doctor in connection with it.

Q. In response to your question as to where the laboratory was located, did he state that there was no separate part of the drugstore used as a laboratory?

A. He stated that it was in his drugstore, and the writer then asked to see the room, and he stated, "It is just where you are standing"—"where you

(Testimony of Henry M. White.)

are" is the way he put it. In my report, I quoted that, those words, "Well, it is just where you are." That is a quotation.

Q. In your examination of the place to locate the equipment of the laboratory, did you find any microscope or sterilizing equipment?

A. No, there was none. That is, I saw none, and I asked to see.

Q. When you asked him with respect to the laboratory, did he state there was no separate room?

A. Yes.

Q. No other place wherein he carries on the business?

A. He said there was no other place except that particular address.

Q. Did you ask him whether there was a doctor or chemist employed in the laboratory?

A. Yes. [315]

Q. What was his answer?

A. His reply was that he had none.

Mr. Rhodes: That is all.

#### Cross Examination

By Mr. Levinson:

Q. What was the occasion of your interview of Mr. Bachman?

A. The complaint was filed against the Stanley Laboratories and was filed in Washington City and was sent here to my office.

Q. What was the nature of the complaint?

A. The nature of the complaint was as to advertising—false and misleading advertising.

(Testimony of Henry M. White.)

Q. And in what way was it false and misleading advertising?

A. In what way? Well, that is what I went there to examine him on, to see whether or not that was true.

Q. You went down there for that purpose?

A. Yes, the particular allegation being that "MD" was false, and misleading, and that that "laboratories",—

Q. It was in connection with these two words, the letters "MD" and in connection with the use of the word "Laboratories"?

A. That is the original complaint.

Q. And so pursuant to instructions, you went to Portland to interview him?

A. Well, not pursuant to instructions. I went there and took up the case in the regular order in which it had been [316] filed in our office, and I wasn't under instructions from anyone except my superior officer in Washington City to do my work, so I didn't go there specifically under instructions to examine this case, but to examine this case along with any other duties.

Q. So that is the reason that you came to Portland, is to interview Mr. Bachman and to see for yourself the circumstances under which this product was being sold? A. Yes.

Q. And of course, you made notes, didn't you, of what you saw? A. Yes.

Q. Do you have those original notes?



(Testimony of Henry M. White.)

A. Well, I—I dictated from those notes, this interview.

Q. And the testimony that you gave on direct examination is from the office copy that you have in front of you?      A. Yes.

Q. You don't have your original notes, do you?

A. I have some of them, I think, but I don't make a practice of keeping those.

Q. May I see this report you have in front of you?

A. Yes. (Witness handing document referred to, to Mr. Levinson). I remember pretty near all of it.

Q. I just wanted to look it over.

Now, when you asked him where the laboratory was, he [317] stated in response to that inquiry that it was right where you were, did you get the impression he meant it was the cigar counter, or the drugstore?

A. Yes. I think Mr. Bachman was somewhat irritated at our investigation, and he simply made that assertion just as I put it in my report.

Q. But you didn't get the impression that was the laboratory, the cigar counter, did you?

A. Well, I got the impression the laboratory was the drugstore.

Q. Yes, in other words, his answer was just a facetious answer, wasn't it?

A. Well, I don't know whether it was that. I explained to you, I think, that he was somewhat irritated.

(Testimony of Henry M. White.)

Q. That is true.

A. And he simply made that sweeping statement, and I was standing right in front of the cigar counter, and he was standing in the rear of the cigar counter.

Q. But it was just a facetious remark, wasn't it?

A. Well, I wouldn't say it was. That is as near as I could answer it, just as I put it.

Q. You took it with a grain of salt, didn't you?

A. Well, I didn't after I looked through the building.

Q. It is quite a large store, isn't it?

A. Well no, it isn't a large store,—it is, oh I would [318] say it is 50 feet fronting on the street and it has the restaurant booths for the restaurant on the opposite side from that where we were standing, and then it has the stairway leading up into the little room upstairs back of the store room.

Q. Well, now, didn't he tell you that the product known as M. D. Medicated Douche Powder was compounded by the Blumauer-Frank Company?

A. Yes, that was the one product, and they put it all up and sent it to him in bulk, and then he measured it out.

Q. Didn't he also tell you that he didn't need a laboratory for that purpose?

A. Well, he just simply said, "Well, you see the laboratory".

Q. Did you go in the back of the store and look at the prescription room?

A. Well, I think that you would call it a pre-

(Testimony of Henry M. White.)

scription room. It is in the back of the store, and goes up the steps—stairs—I had to bend over to get up those stairs, and it was up on the higher elevation.

There is a window up there looking out over the store and that is where the young lady was working.

Q. You have not interviewed Mr. Bachman since May 26, 1937?

A. Yes. Let's see that date—I want to refresh my memory. May 26, 1937.

Q. That was the last interview?

A. That is the last interview with him. I have interviewed [319] others after that, his attorney Mr. Jacobson, on May 26, also, and then as I remember it, he incorporated the company and I interviewed the attorney after that, and I think that I saw Mr. Bachman then and he referred me to his attorney as to the incorporation.

Q. Now, he didn't state that he was manufacturing Contra-Jel, did he?

A. Well, now, I want to be—as I recall it, he said that was manufactured by a concern in New York.

Q. And you didn't go back to see if he had a laboratory, you didn't go in and examine the various equipment?

A. Yes, I went up in there. I looked around to see. I have been in laboratories. I took chemistry for one year, I know what a laboratory looks like, and it was nothing more nor less than simply the

(Testimony of Henry M. White.)

back room of a drugstore. I have been in drugstores on several occasions.

Q. Didn't he tell you, Mr. White, that the name Stanley was the name of his son?

A. He didn't say that. I think I got that impression, but as I remember it, his attorney gave me that impression. He may have—I may be mistaken about that—but I think his attorney gave me that impression. [320]

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### FRANK BLAKE

was thereupon called as a witness, and being first duly sworn, was examined and testified as follows:

By Mr. Levinson:

Q. Just tell us your full name?

A. Frank Blake.

Q. What is your occupation?

A. Registered Pharmacist.

Q. Who are you employed by?

A. Employed by the Bartell Drug Company. We have 22 stores.

Q. That is a chain store organization?

A. Yes.

Q. In Seattle, Washington?

A. Seattle only.

Q. How long have you been with them?

A. Five years. [321]

Q. Mr. Blake, I want to call your attention to Commission's Exhibit 51, which is a can reading

(Testimony of Frank Blake.)

“M. D. Medicated Douche Powder” and ask you if you ever saw a similar product?

A. Yes, sir.

Q. Is that product carried in your store?

A. Yes, sir.

Q. Do you personally sell that product?

A. Yes, sir.

Q. When a customer would come in the store, how would they ask for a product like that?

A. They frequently ask for it by name, by the trade-mark name, by “M.D.”.

Q. The “M.D.” would then indicate to the public that it is a trade-mark?

A. Yes, that is my impression.

Q. Did it ever indicate anything more to you?

A. Nothing more than it was an antiseptic douche powder.

Q. Are there many products on the market of the same or similar nature?

A. Yes, various manufacturers have other trade-names, — Bakarol, manufactured by Sharpe & Dohme as an antiseptic douche powder. Tyrees is another one that is on the market.

Q. Can you name any others?

A. Well, not offhand.

Q. How about Takara?

A. Yes, Takara is one. [322]

Q. When a woman customer comes into the store to ask for these products, do they ask for them by their trade-names?     A. As a rule, yes, sir.

(Testimony of Frank Blake.)

Q. Is the M. D. Medicated Douche Powder a consistent seller?      A. It is.

Q. Did anyone ever ask you whether or not it was compounded by a physician?      A. No.

Q. Have you in the course of your duties in the drugstore seen the same women buying the particular product? What I am trying to get at is this: do these women customers frequently purchase the same brand?      A. Yes.

Q. And is that particularly true of the M. D. Medicated Douche Powder?

A. I think that it is.

Q. Have you ever had any complaints from any customers about the use of any of these products?

A. No, sir.

Q. Now, would you say, Mr. Blake, that the picture of a nurse on the particular exhibit deceives a person?

Mr. Rhodes: I object to that, if your Honor please.

Trial Examiner Reeves: The witness may state what his own impression is.

Mr. Levinson: I will reframe the question. [323]

Q. (Mr. Levinson, continuing): Calling your attention to Exhibit 51, you will observe that it has a picture of a nurse in the cross?      A. Yes, sir.

Q. And that is separated by the letters M and D?      A. Yes, sir.

Q. Now, Mr. Blake, will you state whether or not that picture or that designation leads you to believe that it is a doctor's prescription?



(Testimony of Frank Blake.)

Mr. Rhodes: I object to that, if your Honor please.

Trial Examiner Reeves: The objection is overruled.

Mr. Rhodes: Note my exception.

Q. (Mr. Levinson, continuing): Answer the question, please.

A. My personal impression is that it does not bear that thought.

Q. I didn't quite get your answer.

A. My personal impression is that it does not have that effect upon the customer in their purchasing of that item.

Q. Is it not a fact, Mr. Blake that a similar designation or similar designations are frequently used on drug products?

Not frequently, but are they occasionally used on drug products to indicate cleanliness?

A. Yes. You will find those. You find baby pictures or something like that on J & J Powder.

Q. You have also seen it on toilet paper? [324]

A. Yes, the toilet paper bears the same initial as this, the toilet paper that is called M. D.

Q. The letters "M.D." in and of themselves, do not necessarily mean Medical Doctor?

A. Doesn't necessarily means a physician, no.

Mr. Levinson: You may inquire.

### Cross Examination

By Mr. Rhodes:

Q. How long have you been a druggist?

A. 40 years.

(Testimony of Frank Blake.)

Q. So that you are familiar with medicinal products and the various brands that are used?

A. Yes, sir.

Q. You are familiar with the designation of doctors by the letters "M.D."? A. Yes, sir.

Q. That is universally true, isn't it?

A. Yes, the initials are "M.D.".

Q. And you recognize personally a distinction between medicated products and groceries.

A. Yes, sir.

Q. And that a symbol applied to a medicinal product would not necessarily mean the same thing as if it were applied to a grocery product, would it?

A. Not necessarily. Of course, with a trade-mark, we look [325] at a number of those things as being specific trade-marks irrespective of what the letter may be, it would be a trade-mark name.

Q. Yes, as a druggist, you do look at the mark as a trade-mark, but in the opinion of the laity, the same mark used on a medicinal product would have a different significance from that symbol or mark used on a grocery product or dry goods product, would it not?

A. Well, it is pretty hard for me to say from a layman's mind what they might consider, in view of the fact that they come in and purchase these things under the trade-mark name irrespective of what the product is in a great many cases of a similar nature.

Q. Well, the cross on this package, being Com-

(Testimony of Frank Blake.)

mission's Exhibit 51, is a cross symbolic of Red Cross, is it not,—the Red Cross organization?

A. Well, they have a similar symbol, yes,—but it is——

Q. (Interposing): And a picture of a nurse is symbolic of the nursing profession, is it not?

A. Yes.

Q. And the letters M.D. are symbolic of the profession of doctor, is it not true?      A. Yes. [326]

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DR. FRANK J. CLANCY

was thereupon called as a witness on behalf of the Commission, and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rhodes:

Q. Will you state your full name for the reporter?      A. Frank J. Clancy.

Q. Where do you live?

A. I live here in Seattle.

Q. What is your business?

A. I am a physician and surgeon.

Q. Will you state for the record your educational background?

A. Yes, I graduated from the University of Oregon School of Medicine in 1918, and I served as the Director of the Bureau of Investigation for the American Medical Association in Chicago in 1936 and 1937, and from there I put in two years in the

(Testimony of Dr. Frank J. Clancy.)

Graduate School of Medicine in the University of Pennsylvania in 1937 and 1939, from which institution I received a Master of Medical Science Degree.

Q. You are engaged in the practice of medicine here in [329] Seattle?           A. Yes, sir.

Q. Doctor, this is a case of the Federal Trade Commission against the Stanley Laboratories, Inc. and Edward A. Bachman, an individual trading as Stillman Products Co. and as Stanley Laboratories. The Commission charges the respondent with certain representations which the Commission alleges are false and misleading. The representations are set out in the complaint in the indented paragraphs, pages 2 and 3, of which I hand you a copy. Will you examine that, please?

A. Yes, sir. The next page, too?

Q. The indented paragraphs, yes.

Have you read the matter set out there, Doctor?

A. Yes, sir.

Q. I now hand you the formula for the products, M.D. Medicated Douche Powder, Contra-Jel and M. D. Supercones, and ask you if you will examine that, please?

Trial Examiner Reeves: Is that an exhibit?

Mr. Rhodes: I don't know that that is the exhibit. That is a copy of the formula that was submitted by the respondent.

Trial Examiner Reeves: Well, it is only identified by your statement.

Mr. Rhodes: That is true. I want to hand it

(Testimony of Dr. Frank J. Clancy.)

to the attorney for the respondent to see if he agrees those are the [330] formulae?

Mr. Levinson: We have no objection to your showing that to the Doctor.

Trial Examiner Reeves: You may proceed.

A. Yes, sir.

Q. (Mr. Rhodes, continuing): Now, Doctor, taking up the products as they are listed, M.D. Medicated Douche Powder——

A. Yes, sir.

Q. Is that, according to that formula, a recent development of scientific research, by leading physicians and surgeons?

A. Well, I don't think these things have been developed by leading physicians and surgeons. They all run pretty much to a pattern. There are many of them on the market, and some of them put on one thing and leave out another, but I don't believe it is any great scientific research. These drugs are all well-known to medicine. They are all old timers. There is nothing remarkable about it.

Q. Is that product a cure for cuts, sores, burns and bacteria?

A. Of course I don't know what the strength of the phenol is in here. The only strength given is that of the Oxyquinoline Sulphate, 1/1000, which is antiseptic all right probably if it is in there in that strength, it would have some bacteriostatic action, that is true.

Q. It is recommended to be used one teaspoonful

(Testimony of Dr. Frank J. Clancy.)

to a quart [331] of water. In that solution, would it be a remedy, or cure?

A. I wouldn't think so in that strength, no.

Q. Is that product according to that formula, a germicide? In other words, would it combat the bacteria, say, of syphilis or gonorrhea?

A. Well, we would never depend on such a mixture in the treatment of either gonorrhea—and of course not in syphilis. In syphilis, of course, the medication is intravenously or intermuscularly and doesn't depend on local application.

Q. Is it a contraceptive?

A. Well, it might be that. I haven't had much experience with that. I don't know how much contraceptive value these things have. It might retard or immobilize the sperm to some extent. I don't think you could rely on it 100 per cent. but I suppose it is about the same as all the rest of those contraceptives.

Q. Are any of them reliable?

A. I don't think so.

Q. Is a person capable of self diagnosis?

A. No.

Q. With respect to diseases or conditions for which this is recommended as a cure or relief?

A. No, of course, that is a fallacy of patent medicine medication, is that they presume the patient is qualified to diagnose his own ailments and then prescribe the remedy, which [332] the patient is not capable of doing.

Q. Do I understand by your answer that he is



(Testimony of Dr. Frank J. Clancy.)

not capable of either diagnosing his own case or prescribing the remedy?      A. Yes, sir.

Q. With respect to the product Contra-Jel as shown by that formula, would you say whether that is a contraceptive or will afford protection from venereal diseases?

A. I wouldn't think it would afford any protection particularly from venereal diseases. It is quite strongly acid, has a Ph of 2.7. That is on the acid side, all right. All of them have lactic acid and boric acid and oxyquinoline sulphate in them that I have seen the formulas of. As I say, it might inhibit the sperm. That is not a bacteria; that is something that is very perishable where bacteria of course will survive. I wouldn't think that this would have any value to kill bacteria.

Q. Would that product be a sure preventative of conception?

A. Well, I wouldn't want to qualify myself to say whether it would or wouldn't. I suppose it might in some instances, but I don't think you could say it would be effective 100 per cent., because I don't think any of these things are. I think how soon it was used after intercourse, how much of it was used, and the way it was applied, would make considerable difference in the value of the product.

Q. Would the individual be capable of applying it in a safe [333] and sure manner?

A. No, I don't think—the patient wouldn't know, I don't think, whether they had it in the

(Testimony of Dr. Frank J. Clancy.)

mouth of the cervix or not—I imagine that is where it is applied—I don't see how they could tell.

Q. What would you say with respect to the representations made about the product of M. D. Supercones?

A. I don't know what the Supercones are used for—"Stable and do not lose their antiseptic strength; powerful yet non-irritating antiseptic. Supercones remain in effective antiseptic contact many hours, actually soothing and beneficial as well as antiseptic." Well, I am not quite sure what the purpose it. Why should anyone be putting an antiseptic in them? Why should they be doing that? What is the purpose of it?

Q. Would they be effective in preventing or destroying the venereal disease germs — bacteria, rather?

A. I don't think we can rely on it as a prophylactic against venereal disease.

Q. Would it be a safe and sure contraceptive?

A. Well, as I said before, I don't think there is any such thing as a safe and sure contraceptive.

Q. Now, Doctor, with respect to the product Femeze, it is represented that the product contains the ingredients designated on the box, Commission's Exhibit No. 47A. Will you examine that, please? [334]

A. Well, it says it aids in relief of functional menstrual pains and cramps and it contains acetphenetidin, which is an acetanilid derivation,  $1\frac{1}{2}$  grains per tablet. Well, this is typical of a group

(Testimony of Dr. Frank J. Clancy.)

of products of this class that are sold to women who know nothing about their reproductive organs, and this of course will only do what the pain killing part of it will do, and it is not curative in any sense. There are a great many on the market of just this type. This acetanilid has been condemned for being sold indiscriminately to the public many times by various branches of the Federal Government and by the American Medical Association and this is just one of those things that was sold.

Q. Would that be effective as a cure for a disease that caused pains at the period of menstruation?

A. Well, it wouldn't cure anything. It would only deaden pain. The cause would still be there when the effect of the medicine wore off.

Q. It is represented that the preparation will relax the womb muscles.

A. Well, I don't know what else is in there besides that acetanilid. Do you have the formula?

Q. No, there is no formula given.

A. Well, all that we have got there is the effect of the acetanilid which is a pain killing drug and an analgesic. That is true, I think it is one of the chief constituents of [335] bromo seltzer, which has been condemned by the Government for being sold indiscriminately and they felt that its use was harmful.

Q. With respect to the statement "it relaxes the womb muscles", what is the truthfulness of that, in your opinion?

A. I would say that it is false.

(Testimony of Dr. Frank J. Clancy.)

Cross Examination

Q. (Mr. Levinson): Do you limit your practice to any special branch?

A. Yes, to urology and urologic surgery.

Q. You are not a gynecologist, then, are you?

A. No, sir.

Q. Do you have any objection, Doctor, to the use of a douche by women?

A. None whatever.

Q. There is nothing harmful about it?

A. No, I don't think so, unless the ingredients in themselves are harmful.

Q. But just a product that has the ingredients such as M.D. Medicated Douche Powder, the formula of which you have noted, do you have any objection to a woman using such a powder?

A. No.

Q. And there would be nothing harmful about it?

A. No, not in itself. [336]

Q. In other words, if it had a psychologic effect upon the woman, there would be no objection to its use?

A. Well, that's all right, but I think you are lulling them into a false sense of security when it says it kills all bacteria, because that statement isn't true. Anybody would laugh you out of court on it. If you had a thousand medical men, they would all agree that this thing certainly does not kill all bacteria.

Q. Doctor, if the use of this Medicated Douche Powder or the effect of it is simply cooling and

(Testimony of Dr. Frank J. Clancy.)

soothing, and has a psychologic effect upon a woman, do you have any objection to its use?

A. No.

Q. Do you have any distinction between antiseptic and germicidal?

A. Well, they had to put it in the Wheeler-Lee Amendment to the Food and Drugs Act that an antiseptic must be germicidal. They put that in the last Food and Drugs Act. Before that time, the patent medicine people sold people a lot of stuff as antiseptics and germicides.

Q. Do you draw any difference between the two words?

A. I think that there is a distinction. I don't know as I am prepared to draw a fine distinction, one where it is bacteriostatic, where it would inhibit the growth of bacteria, and one where it would kill. [337]

Q. In other words, a product could be germicidal and not antiseptic?

A. It could be antiseptic and not germicidal, but if it was germicidal, it would have to be an antiseptic.

Q. If it was strong enough—

A. That's right.

Q. —it would go beyond the antiseptic stage?

A. It would become a corrosive, yes.

Q. So there is a difference between antiseptic and germicidal?      A. That's right.

Q. Doctor, I want to call your attention to the Federal Trade Commission exhibit No. 51, the Medi-



(Testimony of Dr. Frank J. Clancy.)

cated Douche Powder can, are you able to see it?

A. Yes.

Q. Just looking at that can, Doctor, does that indicate any recommendation by the medical profession?

A. Well, I think it implies that, all right, subtly, to a great many people who do not read things carefully, or who do not recopy carefully. The words "M D" to people, I think, carry considerable weight. I think that it implies "Doctor of Medicine" or implies that doctors of medicine have put their stamp of approval on it, or have something to do with it, or it drags in the medical profession by implication, at least, I think.

Q. That is your opinion, isn't it? [338]

A. That would be my opinion, yes.

Q. Just seeing the letters "MD" alone, would that mean "doctor" to you, necessarily?

A. Yes, MD means Doctor of Medicine to me.

Q. Suppose you saw MD just on a window on the ground floor of a store, a machine shop, and just saw the letters "MD", would that indicate that there was a doctor in there?

A. Well, I would wonder what a machine shop would have "MD" on its window for, certainly, but by common usage, MD has come to mean the Degree of Doctor of Medicine, and you can't put MD after your name unless you have a right to put it there.

Q. That's it, exactly. It generally follows the name of somebody?

A. Yes.



(Testimony of Dr. Frank J. Clancy.)

Q. If you just saw the letters "MD" it wouldn't necessarily mean——

A. No, but when you build up by common experience that MD means Doctor of Medicine, and then take it out of where it is normally used and put it somewhere else, it still carries that implication. Of course, I think on patent medicine advertising and I have examined thousands and thousands of copies of patent medicine advertising, you have to be a pretty careful fellow to be sure it says what it really says, because it never says what it implies it says.

Q. Have you ever seen the letters MD used on any other [339] products?

A. I don't recall.

Q. Have you ever seen it used on a toilet paper?

A. Yes, I think there is an MD toilet paper.

Q. Just seeing the letters MD on toilet paper, does that give you the impression it is put out by doctors?

A. I think that is the impression they are trying to give, that it is backed up by the medical profession or that the medical profession has something to do with it or endorses it or approves it.

Q. The medical profession is opposed to the use by merchants or manufacturers of the letters MD on their products, is that true?

A. Well, I don't know. I have no authority to speak for the medical profession. I can only speak for myself.

(Testimony of Dr. Frank J. Clancy.)

Q. You have an opposition to the use of the letters MD on products?

A. Yes, I think so. The reason that I object to it, you are implying that doctors have something to do with it. You are dragging doctors in by the ears on a product that should get by on its own merit.

Q. You would be interested in seeing that the letters MD were not placed on products, is that true?

A. Well, I wouldn't go out and make any crusade about it, but I think that it is deceptive. [340]

Q. Do you recommend the use of douche powders to your patients?

A. Well, I don't have many patients where we use douche powders in urology, and occasionally we do recommend a vaginal douche but it is not as a rule powder. It is as a rule something that is used for a specific purpose.

Q. In other words, you formulate a prescription?

A. That's right.

Q. But to save the time of writing a prescription, suppose you just wanted to have your patient just take a douche for psychologic effect, would you say, "Go down and get a well known medicated douche powder"?

A. I don't think I would, no.

#### Redirect Examination

By Mr. Rhodes:

Q. The only time that you would recommend any douche is after an examination, is it not, of the patient?

A. That's right.

(Testimony of Dr. Frank J. Clancy.)

Q. And determination from the condition of the patient that it would give some relief?

A. Yes, for a specific condition after you have diagnosed it. [341]

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### DR. R. PHILLIP SMITH

was thereupon called as a witness, and being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Rhodes:

Q. Will you give your full name to the reporter, please?      A. R. Phillip Smith.

Q. What is your business?

A. Physician and surgeon.

Q. Will you state for the record your training and background?

A. Well, I graduated from college in 1930, from the University of Kansas Medical School in 1934, one year of internship from 1934 to 1935; four years of residency in obstetrics and gynecology in the University of Kansas Hospital.

Q. You are engaged in the practice of medicine in Seattle, are you?      A. Yes, sir.

Q. How long have you been so engaged?

A. Two years,—almost two years.

Q. Do you specialize?

A. Yes. I do nothing but obstetrics and gynecology. [342]

Q. I hand you now what is admitted in the record to be the formula for three of the items, that is, M. D. Medicated Douche Powder, Contra-Jel

(Testimony of Dr. R. Phillip Smith.)

and M. D. Supercones, the indented matter on the page which I hand you. Have you read it?

A. Yes.

Q. With respect to the item designated Medicated Douche Powder, according to the formula which has been handed to you, will you state for the record your reaction to the representations made in the complaint under Item 1 on page 2?

A. The only thing that I can say right at first glance is the fact that oxyquinoline sulphate is merely bacteriostatic. It won't provide protection against all bacteria by any means. It is merely bacteriostatic. It isn't bacteriolytic. It will [343] stop the action, but it won't kill, and when you say "all bacteria", I don't know any product that will kill all bacteria. That is the thing that hit me as I saw it at first glance.

Q. It is stated that it is a recent scientific development, is that true, according to your opinion, or not?

A. There isn't a drug in there that hasn't been used for at least 25 years, I will say. They are all standard.

Q. It is also stated it is endorsed by physicians and surgeons. Is there any product on the market as a medicated douche, and particularly this product, that is endorsed by physicians and surgeons?

A. Absolutely not. We never endorse any one preparation because there is no one preparation will do the job for all women, and there are all kinds of conditions. [344]

(Testimony of Dr. R. Phillip Smith.)

Q. Is there any douche that would successfully——

A. There is no douche that will absolutely protect any patient as far as pregnancy is concerned that I know of.

Q. Now, Doctor, I hand you Commission's Exhibit 51 which is a container for the Medicated Douche Powder, and ask you to examine the representations made there, particularly with respect to the letters M D, the cross, and the picture of the nurse. What is your reaction as to the representations made there with respect to whether or not that product is approved by the Medical Fraternity?

A. Well, glancing at it immediately, you would think the [345] nurses approved it, and the Red Cross probably approved it, too, because they copied that type of cross.

Q. What do the letters M D signify?

A. Those to me mean Doctor of Medicine, but it certainly wouldn't be on any package—Medicated Douche is what it stands for, undoubtedly, but I think it is to make the public jump to the conclusion the doctors are sponsoring it, and no doctor would ever sponsor one douche powder for everything. There is no question about it.

May I say one thing more? I think one thing that stands out in my mind is the fact that these douche powders are put on the market for patients who go into the drugstore and ask for something to use for a douche and the druggist gives them

(Testimony of Dr. R. Phillip Smith.)

this, and they start using in it, and get into some very dire effects sometimes.

Part of my business is getting patients out of trouble that have gotten themselves in with patent medicines or drugs that they have used over a period of time, just as we have other preparations on the market today which will cause vaginitis, and cervical conditions from their constant use.

Q. What is the danger in self-medication by women?

A. They can get into extreme states from self-medication. For instance, the vaginal flora is governed by the Doderlein's bacilli. This bacillus is something that must be present for the woman to have a normal flow and anything too alkaline or [346] acid will sometimes affect that. Raising and lowering the Ph in the vagina allows other organisms which are not the usual type of flora to invade that patient's vagina, and cause all kinds of ulcerative conditions and erosions of the cervix, ulcerative vaginitis and erosion and everything to the point where they can get into some pretty serious conditions.

Q. That, in your opinion, is the objection to the use of Medicated Douche Powder?      A. Yes.

Q. Any preparation of that kind?      A. Yes.

Q. And self medication by women——

A. There should by no means be allowed to be self treatment.

Q. Is the average lay person, man or woman, capable of diagnosing his own case?



(Testimony of Dr. R. Phillip Smith.)

A. No, absolutely not.

Q. Or prescribing for it?                   A. No.

Q. Now, Doctor, with respect to the next product, Contra-Jel, it says, "Contra-Jel is the highest quality vaginal antiseptic in jelly form. Its consistency insures even distribution and prolonged contact with every part of the vaginal tract and its protective action endures as long as it remains within the vagina." Will you state with respect to the representations made of the treatment by this product? [347]

A. Well, in the first place, the claim here that its consistency insures even distribution and prolonged contact with every part of the vaginal tract is absolutely false. There is no preparation you could ever put in the vagina—if you could look inside of it,—that you could be sure every portion of the vagina, which is full of crypts and fissures,—so that you could have any jelly that would cover ever single area in the vagina.

In other words, I do not think it is possible. The average length of contraceptive ability of most jellies in the vagina is relatively short and [348] anything that is admitted into the vagina after a few hours is usually diluted with cervical secretions and so forth that come from the cervix until after a short time they are diluted to the point that they are no longer effective. Just because there is jelly in there is no sign it is a good contraceptive. The only thing I see in this what would possibly lead us to believe that it had any ability at all as a contra-

(Testimony of Dr. R. Phillip Smith.)

ceptive is the Ph 2.7 which if standard would help, but certainly it wouldn't do the whole job. It takes more than a Ph of 2.7 to stop sperm from getting into the cervical canal.

Q. Taking up M. D. Supercones, will you discuss those for the record, please, the representations made?

A. They are practically the same type of substance in that as they have in these other preparations, having added a little salicylic acid and mercury-iodide which I didn't see in the others, but they have there boracic acid, which they depend upon, and cocoa butter which is a good base, but what do they claim for them? I don't think they are antiseptic. Oxyquinoline sulphate is merely bacteriostatic and is not an antiseptic.

Q. Now, discussing the next product Femeze, it states: "It affords relief from functional pains and cramps which accompany menstruation".

A. What is the formula for it? [349]

Q. The ingredients in this exhibit stated in Commission's Exhibit 47A, which I hand you and ask you to examine——

A. The claims are absolutely false. If Acetphenetidin is the only ingredient in this thing, it has nothing to do with the relaxation whatever of the smooth muscle which the uterus is made up of. "Relaxing the contracted womb muscles, allowing them to react in a natural way—doesn't merely deaden with drugs or narcotics to stop pain". Acetphenetidin is an acetanilid derivative. It is very similar to as-

(Testimony of Dr. R. Phillip Smith.)

pirin. That is practically all that is, and aspirin will do just as good a job as this, in my opinion.

Q. Will this cause the contraction of the womb muscles?

A. Relaxing the contracted womb muscles—absolutely not. It won't do anything like that. The womb is made up of, the uterus and cervix is made up of smooth muscle, and it takes a smooth muscle relaxer and there is nothing like that in this. [350]

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### MRS. SLOAN CROFTON

was thereupon called as a witness on behalf of Respondents, and being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Levinson:

Q. Tell us your full name, please?

A. Mrs. Sloan Crofton.

Q. Where do you live?

A. Seattle, 729 Broadway North.

Q. How long have you lived here?

A. Oh, possibly 14 years.

Q. Mr. Crofton is engaged in business here, is he?

A. Yes.

Q. Have you ever seen a product known as Medicated Douche Powder which is similar to Commission's Exhibit 51?

A. Well, I recognize that box, yes. [357]

Q. Where have you seen this before?

(Testimony of Mrs. Sloan Crofton.)

A. In drugstores, and in the homes of people I know.

Q. Have you had occasion yourself to use a product like this?

A. Yes, I always use a douche powder, and I use this one.

Q. How did you come to use this product?

A. Like I would buy anything else, just trying this one and that one.

Q. Have you been using it for some time?

A. Yes, I have used it probably over a period of a couple of years.

Q. Have you ever discussed the matter with your doctor?      A. No.

Q. Have you found it to be a dependable product?

A. Why I have found it very nice for my use, which is just one of cleanliness.

Q. You notice it says MD. What does that mean to you?

A. I would say it is just a trade-name.

Q. Trade-name. Did it ever occur to you that it might mean "Doctor"?

A. No, I hadn't thought of it in that light.

Q. Did you ever think it might have some relationship with the medical profession?

A. I really didn't give it any thought.

Q. Have you ever seen a similar trade-mark on any other [358] product?

A. I think there is a napkin that had that same MD on it.

(Testimony of Mrs. Sloan Crofton.)

Q. Yes, how about sanitary napkins?

A. That is what I meant.

Q. Have you ever seen it on toilet tissue?

A. I don't recall.

Q. You say you have seen this in other women's homes?

A. Yes, I have seen it on the shelves of friends.

Q. Have they ever discussed the question of whether or not that was put out by doctors?

A. No.

Q. Do the letters MD lead you to believe it is a doctor's prescription?

A. Well, now that you ask me to go into it, I might be given the thought, but as I look at that package, that wouldn't occur to me. It would be the same as Listerine or anything else you see a label on.

Mr. Levinson: That is all.

### Cross Examination

By Mr. Rhodes:

Q. How long have you been married?

A. About 20 years.

Q. How long did you say you had used this douche powder?

A. A couple of years.

Q. Do you have any children? [359]

A. I have.

Q. Have you had any children since you used this douche powder?

A. No.

Q. Was that the purpose of using it?

A. No.

Q. When you say you use it just for cleanliness do you mean by that the prevention of disease?

(Testimony of Mrs. Sloan Crofton.)

A. No, that is just a routine habit, the same as I wash my teeth.

Q. What douche did you use prior to two years ago?

A. Oh, I can't recall the name. I have used lots of different douche powders, but I have had this so long I can't seem to think back any further.

Q. How long have you used a douche powder?

A. Oh, possibly 14 or 15 years.

Q. And you have been married how long?

A. 20 years.

Mr. Levinson: I will call Mrs. Turnham.

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MRS. ETHEL TURNHAM

was thereupon called as a witness, and being duly sworn, testified as follows: [360]

Direct Examination

By Mr. Levinson:

Q. What is your full name, please?

A. Mrs. Ethel Turnham.

Q. Where do you live?

A. 1459 Lakeside Avenue.

Q. How long have you lived there?

A. I have lived in Seattle about 10 years.

Q. Do you have any occupation? A. No.

Q. You are a housewife? A. Yes.

Q. Now, Mrs. Turnham, I am calling your attention to a can which is known as Federal Trade



(Testimony of Mrs. Ethel Turnham.)

Commission's Exhibit 51 and ask you if you have ever seen a similar can?

A. Well, yes, I have.

Q. Where have you seen it?

A. Well, I have used that, and I have noticed it in drugstores and homes.

Q. Calling your special attention to the letters "MD" on the can, what does that indicate to you?

A. Well, not necessarily anything, only just a name.

Q. Did it ever indicate to you that it might be a prescription of a doctor?

A. No, it hasn't. [361]

Q. Did it indicate to you it meant Medicated Douche?

A. Not necessarily. I never really thought of it.

Q. You didn't give it any thought? It was just the trade-mark as far as you were concerned?

A. Yes.

Q. Have you ever seen a similar trade-mark on other products?

A. Well, I have noticed M D toilet tissue.

Q. The letter M D on that can, do they lead you to believe it is a doctor's prescription?

A. Not necessarily.

Q. Have you ever discussed with anybody the use of that particular product?

A. Well, I know several girls who have used it and have talked about it.

(Testimony of Mrs. Ethel Turnham.)

Q. How long have you used this particular product?

A. Well, I imagine I have used it about the last three or four years. I couldn't say definitely.

Q. Have you found it efficacious for your purposes? A. Yes.

Mr. Levinson: That is all.

### Cross Examination

By Mr. Rhodes:

Q. How long did you say you had been married? A. 10 years. [362]

Q. And you have used douche powder the past two years?

A. I have used this one I would say three or four years. I couldn't say definitely.

Q. How long have you used just douche powder?

A. I have always used douche powder since I have been married.

Q. You say always—you mean since you have been married?

A. That is what I say, ever since I have been married.

Q. What was your specific purpose in the use of the douche powder?

A. I think just merely cleanliness is all I have always thought of it.

Q. And you have never used it for any other purpose? A. No.

Q. You have never used it to prevent conception? A. No. [363]

## Proceedings

Trial Examiner Reeves: We will proceed in the matter of Stanley Laboratories, Inc., et al., Docket No. 4130, pursuant to notice of hearing given on August 25, 1941.

As understood by the Examiner, the hearing has been arranged for the purpose of enabling Counsel for the Respondents to present a motion to strike out certain testimony.

Counsel for the Respondents may now proceed.

Mr. Hayden: Mr. Examiner—Off the record.

Trial Examiner Reeves: Off the record.

(Discussion off the record.)

Trial Examiner Reeves: On the record.

Mr. Hayden: Mr. Examiner, I appear here this morning on behalf of the Respondents in this case to present a motion to strike out certain testimony, and my reasons and authorities are as follows:

I have moved to strike out the testimony of the Respondent Edward A. Bachman, as shown in the record from page 159, line 2, to page 167, line 15, for the following reasons, that the interrogation of Mr. Bachman in that part of the record is merely cross-examination based upon a report of a Commission official, which report itself was never introduced in evidence, except through the testimony of the man who wrote it, and whose testimony was delivered at a later date.

Now, I have no objection whatever to the testimony [367] of Mr. White, who interviewed Mr. Bachman, but I think it highly improper to read

from a report of an investigator of the Commission and ask Mr. Bachman whether or not certain things specified in that report did or did not happen. The report, of course, as such was not admissible at the time, and I think it is just as improper to cross-examine the Respondent on such a report under those circumstances as it would be to put it into evidence piecemeal or as a unit.

Now, I moved to strike out also the testimony of the Witness F. R. Stipe, record page 202, line 10, to page 203, line 24, on the grounds that the witness was a salesman for a wholesale drug company, and there was no evidence that he knew the medical uses of MD Powder, or any other product in that category; and, secondly, for the reason that Commission's counsel interrogated Mr. Stipe on matter quoted from the complaint and asked the witness what purposes were to be served by the use of that powder.

Now, we contend that it is highly improper for counsel for the Commission to read the complaint to a witness, or any part of it, and then ask him questions based upon that complaint. We submit that the only proper thing for a witness to do is to answer questions based upon his knowledge of facts. This was not done. Counsel for the Respondents at that time objected to the questions asked from the complaint, and the objection at that time was overruled, and we think erroneously. [368] Now, we moved also to strike the testimony of Dr. Norman A. David, record page 207, line 1, to page 239, line 16, for the following reasons:

First, the testimony of the doctor concerned experiments with vioform-ciba, which is not a product having anything to do with MD Powder, and we submit there was no connection between the two, hence it was entirely inadmissible.

Trial Examiner Reeves: Off the record for a minute.

(Discussion off the record.)

Trial Examiner Reeves: On the record again.

Mr. Hayden: We submit in connection with the testimony on vioform-ciba that there was no testimony to show that the properties of that drug and MD Powder were the same, or that they reacted similarly to the tests made; consequently, the testimony can have no possible value as to the use or the characteristics of any ingredient in the MD Powder.

Secondly, the testimony concerning experiments on guinea pigs with oxyquinaline sulphate, which is an ingredient used in MD Powder, we think are worthless, first of all, because performed upon pigs and not upon women, and also because there was no testimony to show that the tests were used for the treatment of diseases or infections which are common to women, or to show that the conditions found in the guinea pigs were all similar to those found in women, so there is no relationship between the results of such tests and [369] in tests that might have been used on women with the same drug. And, furthermore, the drug is only one of the ingredients of MD Powder, and consequently no fair test was made, because the use of MD Powder

includes the use of a number of other ingredients as well.

We moved also to strike the testimony of Dr. David, record page 210, because the questions involved interrogations as to the complaint, and we submit that the complaint is not evidence; that the witness has no right merely to state an opinion on the complaint; that the complaint includes no proof; that an expert witness may express his opinion based upon facts only or upon hypothetical questions based upon evidence; that an expert witness has no right to testify merely as to his understanding of descriptive matter; and, finally, that the testimony of an expert witness based only on his understanding of the meaning of descriptive matter is worthless, because there is no evidence that his interpretation of that meaning is correct, that is, the generally accepted interpretation, nor that it is the interpretation of these respondents.

Further, the request of Commission Counsel for the Doctor's interpretation of the quotation found at page 210, lines 9 to 12, is objectionable, because that sentence is capable of a thousand interpretations. The witness did not write the advertisement. He was not in a position to interpret its meaning. [370] And we submit that the language of the advertisement speaks for itself.

The further quotation by Commission's Counsel of material from the complaint regarding oxyquinaline sulphate, record page 13, is objectionable also because the witness ignored the fact that



the drug is merely one ingredient of MD Powder, and witness failed to show that he understood the formula; and, further, because the Doctor inferred that the sulphate was used as a preventive against pregnancy, whereas neither the advertisement nor the doctor indicates any rational basis for such inference. The record shows affirmatively that there is no evidence whatever that MD Powder has ever been advertised to prevent pregnancy, nor that it has in fact been so used.

Now, Commission Counsel asked the witness, record page 220, lines 4 to 7, as to the impression made on his mind as to the truthfulness of certain statements. I think the impropriety of such a question requires no argument.

Commission Counsel, record page 221, lines 4 to 6, asked the witness for his impression of the meaning conveyed by the representations made. We think that no argument is needed there to prove the impropriety of such questions.

The Respondents further moved to strike out the testimony of Dr. Albert Holman, record pages 261 to 265, for the same reasons given in the case of Dr. David, because the witness testified as to his opinions of statements appearing in [371] the complaint, which is not evidence at all.

The Respondents moved also to strike out the testimony of Dr. Albert Holman, record page 285, lines 7 to 25, because he testified that in his opinion other people think that MD Powder is recommended by the medical profession. He says he was not personally misled. And we submit that expert

opinion cannot be used to show what is in other people's minds.

Respondents moved to strike out the testimony of Dr. Thomas R. Montgomery, record pages 287 and 288, which deals with the opinion of the witness as to allegations set out in the complaint, for the same reasons given for striking out the testimony of Dr. Norman A. David, and for the further reason that an expert witness is not entitled to express an opinion on charges, since such charges are not evidence.

Now, the Respondents moved further to strike out the testimony of Dr. Thomas R. Montgomery, record pages 288 and 289, dealing with the use of the letters "MD," because his opinion shows he thinks these letters deceive other people. There is no testimony to show that he was deceived, and we submit that he is not in a position to testify as an expert as to whether or not other people have been deceived.

We moved to strike out the testimony of Dr. Frank Clancy, record pages 331 and 332, for the same reasons just given in the case of Dr. Norman A. David, because Dr. Clancy likewise expressed opinions as to the charges in the complaint. [372]

We moved to strike out the testimony of Dr. Frank Clancy, page 388, with respect to the use of the letters "MD," for the first reason that the question was a leading question, and, further, because the answer merely indicates what the witness felt others might think, and there is no indication

that he was in position to know what other people thought.

We moved to strike out the testimony of Dr. Phillip Smith, record page 342 to 345, for the reasons that said testimony is mere opinion as to allegations in the complaint.

We moved to strike the testimony of Dr. R. Phillip Smith, record page 345, with respect to the use of the letters "MD," because the witness was asked as to his reaction as to whether the use of those letters was intended to indicate approval by the medical profession, and his answer did not express his own opinion, as to himself, but stated what he thought the opinion of others would be, and the doctor himself was not deceived.

Finally, we moved to strike the testimony of Dr. R. Phillip Smith, record page 345, concerning the purpose of putting douche powders on the market. No such question was asked by Commission Counsel, and there is no proof that MD Powder had any ill effect upon anybody; and on page 346 of the record the question asked about self-medication by women is objectionable because there is no proof that MD Powder is used by women who practice self-medication. There was no proof [373] that MD Powder ever caused ill effects to anybody; and, finally, the question of self-medication is immaterial here, because the Commission is not the guardian of the health of the whole people of the country, and it has no jurisdiction to consider the question whether people should diagnose their own ailments, either real or imaginary.

Now, if I may take a moment to present a few cases and authorities on these points.

I submit, first, that with respect to the objection to testimony of Mr. Bachman no argument is needed. The cross-examination of that witness was obviously inadmissible. The Commission later on examined Mr. White in person, and we think that is entirely proper. At that time Mr. Bachman had the right to introduce cross-examination if he felt that any testimony by Mr. White was erroneous.

Now, so far as the testimony of F. R. Stipe is concerned, a lay witness is obviously incompetent to testify as to the medical uses of a drug. A mere salesman has no standing in that connection.

So far as the testimony of Dr. David as to his experiments with viaform-ciba is concerned, it was obviously inadmissible, because it did not have any bearing upon the issues in this case, and was apparently merely intended as testimony which would be prejudicial to MD Powder on the basis of an analogy, not upon direct tests. And the testimony as to [374] guinea pigs was likewise worthless, because it had no relation whatever to MD Powder.

The testimony of the witness Dr. David dealing with his interpretation of quoted matter is erroneous and inadmissible, and as authority for the contention that an expert witness has no right merely to express his interpretation of quoted matter in such circumstances, I cite the case of *Connecticut Mutual against Lathrop*, 111 U.S. 612.

Upon the principle that an expert witness may express his opinion based upon facts, I cite the case of *Chicago, R. I. & P. Railway Company v. Holmes*, 94 *Northwestern*, 1007.

Upon the principle that expert witnesses are not permitted to testify as to interpretations or impressions, I cite the following cases: *Stephenson v. Atlantic Terra Cotta Company*, 230 *Federal* 14; *Lawrence v. Thompson*, 49 *New York Supplement* 839; *Henderson v. Brunson*, 149 *Alabama* 674; *in re Estate of Workman*, 174 *Iowa* 222; *Raub v. Carpenter*, 185 *U. S.* 159; *U. S. v. McGlue*, 26 *Federal cases* 1093.

Now, the testimony of Dr. Albert Holman with respect to matters contained in the complaint was likewise inadmissible, for the reasons just given; and the testimony of Dr. Holman concerning the opinion of other people is clearly inadmissible, since there is no proof that he knew what other people thought about this product. In connection with this matter, I cite 2 *Wigmore on Evidence*, paragraphs 661, et seq., and 7 *Wigmore on* [375] *Evidence*, paragraphs 962 et seq.

The testimony of Dr. Montgomery was likewise inadmissible, for the reasons just given; and the testimony of Dr. Frank Clancy was likewise inadmissible, for the reasons just given; likewise, the testimony of Dr. R. Phillip Smith.

Now, we submit that testimony by doctors who are qualified as experts to testify on matters of opinion is well recognized, but their testimony must



be factual or in answer to hypothetical questions based upon facts in the record.

Now, the precise question as to the application of rules of evidence to testimony taken in cases before the Federal Trade Commission we realize has never been adequately dealt with, either in the rules of the Commission itself or in the decisions of federal courts. The generally accepted theory is that the strict rules of evidence are somewhat relaxed in their application to testimony before the Commission. But we find nowhere, neither in Commission practice nor in federal decisions, any recognition of a principle which permits either experts or lay witnesses to ignore altogether the usual rules of evidence. The case of *Bene & Sons against Federal Trade Commission*, 299 Federal 468, indicates that the strict rules of evidence should not be applied rigorously to testimony before the Commission, but the following quotation from that case indicates that the court had no intention of opening the door wide: [376]

“We are of the opinion that the evidence or testimony, even though legally incompetent, if of the kind that usually affects fair-minded men in the conduct of their daily and more important affairs, should be received and considered; but it should be fairly done.”

Now, we submit it is perfectly clear that a fair-minded man could not possibly accept the testimony of a witness who was asked what he thought about the allegations in a complaint. This amounts to the same thing as asking a witness whether he



believes that the charges in an indictment are true. If a man who was accused of a crime and a witness took the stand and was asked his opinion as to whether or not the man was guilty as charged, we would be horrified. In a criminal case, and in other cases as well, the witness is permitted to testify only as to facts within his knowledge, and as to opinions which he is qualified to give if he is an expert.

Now, the act of Commission Counsel in this case in getting opinion evidence from doctors by reading the complaint is so thoroughly objectionable we think no real argument is necessary.

Now, equally objectionable, we think, was the practice of Commission Counsel in asking medical witnesses for their impressions of advertising material published by the Respondents, for their interpretations of advertising material heretofore published, and for their opinions as to whether or [377] not people (that is, people not including the witness) were led to believe that the letters "MD" indicated that the powder was sponsored by the medical profession. Now, we think no fair-minded man would accept as worth while the impressions, interpretations, and opinions of doctors or other expert witnesses on matters of that character.

For example, the advertising literature concerning MD Powder consisted in part of statements of fact and in part of statements of opinions which describe the product in complimentary terms. Certainly the opinion of a qualified witness as to the facts involved was worth while; certainly the opin-

ion of a doctor as to the opinions of the manufacturer could have no probative force in this case.

As a further example, the testimony of a doctor that the letters "MD" suggested "Doctor of Medicine" to him, but did not deceive him, is perfectly proper; his further testimony that in his opinion other people were deceived is worthless, since he could not know what was in the mind of other people unless he had information that they were in fact deceived.

No witness in this case has testified that in purchasing MD Powder he or she was deceived into believing that the letters "MD" indicated that the product was sponsored by a doctor or by the medical profession generally.

Now, perhaps the most authoritative and persuasive discussion of the matter of applying the rules of evidence in [378] cases of this kind is an article written by a member of the legal staff of this Commission, Wilbur N. Baughman, who has been with the Commission for many years.

I cite an article entitled "The Federal Trade Commission and the Rules of Evidence," by Wilbur N. Baughman, appearing in 5 Journal of the D. C. Bar Association, page 397, which was published in 1938, and in that article Mr. Baughman discusses in considerable detail the cases beginning with the Bene case and carrying it right down to date to indicate his view of the rules of evidence under which the Commission is guided.

Off the record.

Trial Examiner Reeves: Off the record.

(Discussion off the record.)

Mr. Hayden: On the record.

In this article Mr. Baughman cites all of the pertinent cases dealing with the matter of admission of testimony, and in order to save time I call attention in the record merely to the conclusion of the author with respect to the rules of evidence. He says in part:

“Thus, while it appears, from the few pertinent court cases on this question, that there has been some relaxation of the rules of evidence in admitting evidence before the Commission, particularly in the Bene case, yet it is evident that the Commission has adhered rather strictly to the common- [379] law rules of evidence, inasmuch as the liberalizing ‘prudent and fair’ test laid down in the Bene case has not been followed, and because there have been so few cases carried to the courts on this point.”

And, finally, Mr. Baughman says:

“Lastly, by way of summation and reiteration, it is submitted that it is clear that, while the Commission is not bound by the strict rules of evidence obtaining in the courts, and there has been some relaxation of these rules, as an examination of the cases digested discloses, yet none of these cases, not even the Bene case, goes so far as to sanction a finding based solely on hearsay evidence or incompetent evidence; that, furthermore, the Commission has been

conservative in its reception of evidence, as is disclosed by the fact that it has not followed the Bene case. This shows that the Commission does as a matter of fact adhere closely to the common law in the traditional manner."

Now, Mr. Examiner, I submit that, on the basis of this motion and the argument and authorities cited in this case, that those portions of the testimony which are affected by the motion to strike should be stricken, in accordance with the motion, on the grounds that the testimony complained of is inadmissible and incompetent, and should not form a part of the record in this case.

Trial Examiner Reeves: Have you any reply argument, [380] Mr. Bellinger?

Mr. Bellinger: Yes, Your Honor, just a few words. I do not think I will be more than ten minutes at the most.

Trial Examiner Reeves: All right.

Mr. Bellinger: Briefly, I shall take up the Respondents' motion witness by witness.

First, as to the testimony of the Respondent himself, Mr. Bachman, I would like to call Your Honor's attention to the fact that some of the very testimony that Respondent asks to be stricken from the record, testified to by Mr. Bachman, was cross-examination by his own counsel, brought out at the hearing by his own counsel under cross-examination, and Mr. Bachman was certainly not under cross-examination by the Commission's counsel; he was under direct examination. Now, I cannot see how

there can be any objection to examining Mr. Bachman with respect to an interview which he had previously with an official or representative of the Commission. He is an intelligent man. He knew what he was saying when he talked to this representative of the Commission, and when he was on the stand he certainly knew that he was not going to testify to anything detrimental to himself unless it was the truth. Now, he was subject to examination on what he had previously told a representative of the Commission. That was in an official investigation of his activities leading up to this case. And I submit in all fairness that anything that he might [381] have told this representative certainly laid him subject to being examined thereon when he took the stand. That seems too simple for argument to me.

Now, with respect to the motion of Mr. Stipe's testimony, I might call Your Honor's attention to the fact that the testimony shows that Stipe had been a salesman of this type of product involved in this case for many, many years.

I beg your pardon. Did you start to say something?

Trial Examiner Reeves: Off the record.

(Discussion off the record.)

Mr. Bellinger: So that it seems to me that a man who could qualify himself to the extent of having devoted almost his entire working life, you might say, to this line of activity had qualified himself as an expert to testify to practically anything with respect thereto; and if he could not know what



the uses of this product were, and what they were sold for, then he did not know his own name. He certainly was not capable of selling them if he did not know after all those years the answers to those very questions and was not capable of giving sound testimony thereon.

Now, with respect to the doctors, the chief objection seems to be that counsel for the Commission in his examination of these witnesses referred them to paragraph 3 of the complaint, which included the advertising representations of these products by the respondents and asked questions of them as [382] to those advertising representations contained in paragraph 3 of the complaint. Now, frankly, in all fairness, I am willing to admit that if those advertising representations were not in the record at that time that the questions would have perhaps been ill advised and improper. I do not think under ordinary circumstances it would be well to examine a witness with respect to allegations contained in the complaint. But my friend seems to overlook the fact in this case that those very allegations, verbatim, were admitted in the record in the very beginning of this case. At the very first hearing ever held in this case, right here in this room, on July 30, 1940, those allegations about which these witnesses were queried were admitted in the record in a stipulation by the Respondent, shown from pages 3 to 9, I think, in the record. So it seems to me mere child's play to say that this testimony should be ruled out because the complaint that the witnesses were asked about was not a part of the



evidence. I admit the complaint is not evidence, but it so happens that the exact language contained in the complaint that they are kicking about was in the record in two places; first, in that stipulation, and, second, in the advertising exhibits which were introduced by the Commission containing the exact language about which they were questioned. So I do not think any further comment with respect to these objections as to the doctors' testimony is necessary. [383]

Now, the objection that experts could not be asked to say what the impression on other people's minds would be from reading certain advertising might also be taken under certain circumstances, but they were not asked exactly in that way. They were asked what the reaction would be, or what the impression would be after reading this testimony, and these men being experts, having had a long line of professional experience with women, dealing in such problems and such troubles and such products as are involved in this case, it seems to me could certainly give their viewpoint as to what their experience had been from those women, what they had gotten from those women in the way these women thought, and the uses for such products, and what they could get in seeing them advertised. There was a vast difference in eliciting or obtaining that type of testimony from experts, who had dealt in this line of business, and these troubles, and these products all their lives, and getting the same sort of testimony from a layman, such as I am, who would not be

calculated to know possibly what a woman might think by reading these things.

Now, the only other objection is as to the testimony of Dr. David with respect to his tests with the drug vioform-ciba, which is the same thing as iodochlor sulphate. Now, counsel argues that that testimony should be stricken because it is worthless, because it does not amount to anything. Well, as a matter of fact, that doctor testified that that [384] drug was related closely, was his exact language, as disclosed by the record, was not similar to, but was related closely to the oxyquinoline sulphate, which is an ingredient and an important ingredient in the MD Powder, with which we are concerned in this case. So that the gist of his testimony along that line would be to the effect that this drug that was contained in here was so similar to the drug he dealt with that it perhaps would have the same reaction on people and animals. Now, as to whether that is worthless or not we are not concerned with. Counsel might argue that considerable of this testimony is worthless. In fact, it seems to me that all argument in any case with respect to testimony, if you are opposing it, is that it is worthless. That is the old cry. That is the only thing that I can say. But when you say the testimony is worthless you are not damning it as being inadmissible. Maybe it is worthless. I do not know what the Commission will say about it. I do not know how valuable the Commission will consider it. I am frank to say that I do not think it is of such grave importance that any single point in the case is going to

turn on it. But I think it is admissible, worthless or not worthless, for the Commission's benefit in considering it. I do not think the fact that he may argue that it is worthless means that it was incompetent or inadmissible. I think that goes to the weight of the thing, the weight that should be given to it, and it is perfectly admissible for what [385] it is worth.

Now, that I think, is clearly the viewpoint that any court should take on that type of testimony with respect to that type of objection. And I think that covers briefly and generally every objection that is made to the testimony of these witnesses. In other words, I think the greater volume of the testimony objected to is objected to by reason of the method of examination that was used by Commission's counsel in the West in referring to these allegations, or this allegation in the complaint with respect to the representations, the advertising representations. And since, although I admit that the complaint was not evidence, since that thing was verbatim in evidence, in the exhibits, and in the record in the stipulation, I cannot see how there can possibly be any objection to it. I think it was perfectly admissible.

And here is another point. If it were ruled out on that technical objection alone, the case is not closed, and it would simply mean, if Commission's counsel thought the testimony was important enough, that we will have to have further hearings and produce the same proof without the use of the complaint.

That is all I have to say.

Mr. Hayden: In reply, Mr. Examiner, I want to make the following comment.

First as to the testimony of the defendant Bachman. [386] My friend says that it was not cross-examination but direct. The form of the examination can lead to only one conclusion: It was conducted as cross-examination and not as direct examination. If it were direct examination then the Commission would be bound by it.

Now, the form of the examination consisted in reading from Mr. White's report and asking Mr. Bachman if this was not true and if that was not true. Now, I submit that was highly improper. It was inadmissible testimony in that form. The Commission did get Mr. White's report in evidence, quite properly, from Mr. White himself. I did not object to that. I do object to doing on cross-examination what is obviously improper, when the same testimony was afterwards introduced in the proper way.

Now, so far as Mr. Stipe is concerned, he was a salesman. He was asked as to the medical uses of drugs. I do not care whether Mr. Stipe sold drugs for one year or for a hundred years; that still did not qualify him as an expert on the uses of drugs. A gasoline station attendant may sell me gasoline all his life, but he still does not know the chemical properties of any of his products, nor is he qualified to state anything with regard to them, except the bare fact that he is selling what is obviously before him. There is no testimony to show that Mr.

Stipe in all of his years as a salesman had ever become an expert or was qualified in any [387] way to testify as to the medical uses of the drugs he sold.

Now, with respect to the doctors, I think it is clear that it is never proper to ask a witness his reactions or his impressions, or his views as to charges in a complaint. Now, we have these objections not only to the form of the questions. It is fundamental that a witness cannot testify as to his views of charges made in a complaint, nor as to his opinions of the truth or falsity of those charges.

Obviously the purpose of the witness in answering those questions was to testify on behalf of the Commission as to his views as to whether or not MD Powder and the other products concerning which the complaint was made were good or bad, were truthful or untruthful, and the testimony of those witnesses was obviously prejudicial and so intended. Under those circumstances I submit that it was highly improper to ask any expert witness to condemn or praise, as the case may be, any statement concerning any product quoted merely from a complaint.

Now, it is quite true that the stipulations and the exhibits in the case were present. It would have been a simple thing for Commission's counsel to hand a box of MD Powder to a witness and ask him what he knew about it, ask for facts, and if he knew the facts, to ask for an opinion based on those facts. But none of those witnesses had any real familiarity with MD Powder. They were simply asked as to [388] whether or not they thought that



the statements in the charges were true or untrue, or what not.

Now, counsel seems to agree that these doctors were not in a position to testify generally as to the opinions of other people, but he feels that these doctors had had so much experience with women and with these drugs that they were competent to testify out of their experience. The record, however, does not disclose that any doctor who testified testified that as a result of his experience with women that any woman had been deceived by the purchase of MD powder thinking that it was approved by any doctor or by the medical profession. As a matter of fact, most of the doctors who testified had never seen or heard of MD powder before and had never used it in their practice.

Now, with respect to the tests made on vioform-ciba, my argument was not merely that it was worthless. Yes, we think it is worthless; but the fundamental objection I stated was, and I repeat it, that the introduction of that testimony was improper; that it was not only prejudicial, but that it was inadmissible in the circumstances. The mere fact that the drug might be related closely to the oxyquinoline sulphate is no excuse for testifying as to experiments made with vioform-ciba. We must not forget that the oxyquinoline sulphate was only one of a large number of ingredients in MD Powder. The MD Powder was never separated into its component parts for use; [389] it was used as such. And the effect of the oxyquinoline sulphate was a part only of a general formula. I



think for a doctor to testify that he had made tests with another drug closely related to the oxyquino-line sulphate, and to say that on the basis of that he disapproved of the whole formula, is absurd. There was not any proof whatever that any test was made of MD Powder by any doctor who testified for the Commission. Now, if experiments are to be introduced in evidence to show that MD Powder is good, bad, or indifferent, such tests should be made on the product concerning which the Commission is giving its consideration, and not upon some other drug, by itself.

Now, we submit further that the objection to these portions of evidence is not merely because of the method of the examination. I think counsel for the Commission agrees the method was bad. We object not only because the method was bad, but for the more fundamental reason that the answers, themselves, for the most part were thoroughly inadmissible, because they stated in part offhand opinions based, not upon their experience, not upon their experiments, but simply upon their supposed medical knowledge.

Now, counsel says that we have interposed merely a technical objection. We submit that the admissibility or inadmissability of evidence is a technical matter. Now, the Commission has been in business for a long time and its counsel [390] are presumed to know that if a piece of testimony is inadmissible in the form in which it is offered it is inadmissible regardless of form.

Now, if it results that further hearings must be

had in order to introduce testimony the Commission may think it necessary, that is immaterial here. That is no excuse for keeping in the record and making a part of this case testimony which is inadmissible and incompetent and improper under the rules.

That is all I have to say, Mr. Examiner.

Trial Examiner Reeves: Off the record for a moment.

(Discussion off the record.)

Trial Examiner Reeves: It is the opinion of the Examiner that the motion to strike out certain testimony filed by counsel for the Respondents on July 25, 1941, should be denied, and it is so ordered, to which ruling counsel for the Respondents are given exceptions.

Mr. Hayden: We note our exceptions.

Trial Examiner Reeves: We will now adjourn without date. [391]

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[Title of Commission and Cause.]

### CERTIFICATE OF COMMISSION TO TRANSCRIPT OF PROCEEDINGS

I, Otis B. Johnson, Secretary of the Federal Trade Commission and official custodian of its records, do hereby certify that transmitted herewith is a full, true, and complete transcript of proceedings had before the Federal Trade Commission in the above entitled matter, except original exhibits to testimony which, in accordance with agreement between counsel, will be certified later.

That photostat copies of Commission Exhibits 7, 8 a-b, 9, 10, 13, 14, 15, 16, 17 a-c, 18, 19, 20, 21, 22, 23, 24, 25 a-b, 26 a-b, 27 a-b, 28, 29 a-b, 30 a-b, 31 a-b, 37 a-b, 38 a-b, 39 a-b, 41, 48, 49, 50, and Respondent Exhibits 1 and 2 are transmitted herewith.

That this transcript is certified to the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the filing in said Court of a petition for review of an Order to Cease and Desist, dated April 1, 1942, entered by the Federal Trade Commission in that proceeding.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission at its office in the City of Washington, D. C., this 24th day of February, A. D. 1943.

[Seal]

OTIS B. JOHNSON

Secretary

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[Endorsed]: No. 10149. United States Circuit Court of Appeals for the Ninth Circuit. Stanley Laboratories, Inc., and Edward A. Bachman, an individual trading as Stanley Laboratories and as Stillman Products Company, Petitioners, vs. Federal Trade Commission, Respondent. Transcript of the Record. Upon Petition to Review an Order of the Federal Trade Commission.

Filed March 2, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10149

STANLEY LABORATORIES, INC., and ED-  
WARD A. BACHMAN, an individual trading  
as STANLEY LABORATORIES and as  
STILLMAN PRODUCTS COMPANY,  
Petitioners,

vs.

FEDERAL TRADE COMMISSION,  
Respondent.

PETITION TO REVIEW ORDER OF FED-  
ERAL TRADE COMMISSION TO CEASE  
AND DESIST.

To the Honorable Judges of the United States  
Circuit Court of Appeals for the Ninth Cir-  
cuit:

Your petitioners, Stanley Laboratories, Inc., a  
corporation, and Edward A. Bachman, an indi-  
vidual trading as Stanley Laboratories and as Still-  
man Products Company, respectfully represent:

I.

That the Stanley Laboratories, Inc., is a corpo-  
ration doing business in the State of Oregon, and  
Edward A. Bachman is an individual residing in  
the State of Oregon and is President of Stanley  
Laboratories, Inc., and that they are both con-

ducting and carrying on their business in an area within the territory of the United States Circuit Court of Appeals for the Ninth Circuit and the acts and statements referred to herein were done and made within said circuit.

## II.

That on or about the 7th day of May, 1940, the respondent Federal Trade Commission, pursuant to an act of Congress approved September 26, 1914, entitled "An Act to Create the Federal Trade Commission, to Define its Powers and Duties and for other Purposes," as amended, (15 U.S.C.A. sec. 45), issued, filed and served its complaint against your petitioners charging your petitioners with unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act aforesaid in the sale of medicinal preparations known as MD Medicated Douche Powder, Contra-Jel, Femeze, and MD Supercones, in violation of the provisions of said act as amended. A copy of said complaint will appear in the transcript of the record in said proceedings to be filed herein by said respondent.

## III.

That on or about the 31st day of January, 1940, your petitioners herein filed a stipulation with the Federal Trade Commission, hereinafter referred to as the Commission, stipulating that they had ceased and desisted from and would at all times thereafter cease and desist from the matters complained

of, except the use of the letters "MD," which was not acceptable to said Commission; that thereafter your petitioners herein filed an answer to said complaint; that thereafter your petitioners and said Commission agreed upon a stipulation concerning certain phases of the case, which was duly filed in the record of the proceedings in the case; that thereafter a second stipulation was filed in the record of this case by agreement between your petitioner and said Commission. All of the above papers and documents will appear in the transcript of the record of the proceedings to be filed by the respondent in this case.

#### IV.

After the joinder of issue in said proceedings between your petitioner and respondent herein, said respondent set the matter down for hearing before Trial Examiner William C. Reeves of said Commission and thereafter testimony was taken on behalf of your petitioner and on behalf of respondent in Washington, D. C.; Detroit, Michigan; Portland, Oregon; and Seattle, Washington, as will appear from the printed transcript of the entire record in said proceedings to be filed herein by respondent.

#### V.

That thereafter a report upon said hearings was filed by Trial Examiner Charles A. Vilas on the 3d day of November, 1941, original Trial Examiner Reeves having died in the meantime; thereafter the Commission through counsel filed a brief



in the case and an answering brief was filed by your petitioner; that oral argument was heard before the Commission, and thereafter the Commission on the first day of April, 1942, made certain findings of fact and conclusions of law (served on your petitioner on April 3, 1942, a copy of which is attached hereto marked "Petitioners' Exhibit A" and at the same time the Commission issued an order to cease and desist against your petitioners with respect to the product MD Medicated Douche Powder, a copy of which order to cease and desist is attached hereto and marked "Petitioners' Exhibit B"; both of these exhibits are incorporated herein by reference.

## VI.

That your petitioners, believing themselves aggrieved by the said "Order to Cease and Desist," and considering the same unlawful, prejudicial to their interests and being without a remedy except in this court, which is specifically designated by the said Act as amended as the court to review the orders of the said Commission, hereby petition this court for a review in this court of said order to cease and desist filed by said Commission and petitioners assign various errors of the Commission in the proceedings held before it. The principal errors of said Commission are as follows:

1. That the findings of the Commission as to the facts, and the conclusions of the Commission as to the law involved, and the order of the Com-

mission based thereon are invalid for the reason that the Commission was without legal power to make said findings or said order and for the further reason that said findings and the said order are not supported by the testimony on the evidence in the case.

2. That said findings of fact, conclusions of law and the order to cease and desist are not supported by credible evidence in the case and the record of the proceedings in this case does not contain evidence which any reasonable person would accept as adequate to support said findings of fact, conclusions of law or order to cease and desist.

3. That the said findings of fact, conclusions of law and order to cease and desist are based in part upon testimony which was inadmissible in evidence, and were in part based upon testimony secured by the Commission by unfair and improper means and which was irrelevant, immaterial and inadmissible in evidence.

4. That the said findings of fact do not show that your petitioners are guilty of unfair competition with any person selling similar products and do not disclose that your petitioners are engaged in any business which constitutes unfair or deceptive acts or practices in commerce within the intent and meaning of the said Act as amended.

5. That most of the medical testimony in the case on behalf of respondent was irrelevant, immaterial and inadmissible in evidence; that said testimony was based largely upon a consideration of the complaint by said witnesses and their testi-

mony was merely opinion as to the truth or falsity of matters set forth in said complaint. That paragraph 7 of said findings of fact and paragraph 4 of said order to cease and desist are based upon testimony incredible in its nature, improperly secured by the Commission and unworthy of belief by any disinterested person, and further that said paragraphs do not show that any person was deceived by either of the products of your petitioners or that any member of the public who might purchase either of said products was deceived in any way by the use of the letters "MD" on MD Medicated Douche Powder; that the testimony on the contrary showed that many persons had purchased said MD Medicated Douche Powder and were entirely satisfied with it.

6. That said conclusions of law and order to cease and desist are erroneous, contrary to law and in excess of the power and authority of the Commission.

7. That the conclusions of law and the order to cease and desist are not supported by the said findings of fact.

Wherefore, your petitioners pray that a copy of this petition be served upon the respondent and that the respondent be required to certify and file in this court the transcript of the entire record of the proceedings of the respondent against petitioners and that the findings of fact, conclusions of law, and order to cease and desist attached hereto as petitioners' Exhibits A and B be set aside and

held for naught, or that the order to cease and desist be modified, altered or changed, or that this Honorable Court reopen said proceedings for the purpose of taking such additional testimony as to the court may seem necessary and for such other and further relief as to this court may seem proper and just in the premises, and that the petitioners may recover their costs herein expended.

STANLEY LABORATORIES,  
INC., a corporation, and  
EDWARD A. BACHMAN, an individual trading as STANLEY LABORATORIES and STILLMAN PRODUCTS COMPANY.

By EDWARD A. BACHMAN

LEO LEVENSON, Esquire

Spalding Building  
Portland, Oregon

JAMES J. HAYDEN, Esquire

1323-18th Street, N.W.

Washington, D. C.

Attorneys for petitioners.

State of Oregon

County of Multnomah—ss.

Edward A. Bachman, being by me first duly sworn, deposes and says:

That he is the President of Stanley Laboratories, Inc., a corporation, and respondent before the Fed-

eral Trade Commission in the foregoing matter; that he has read the foregoing petition and knows the contents thereof and the same are true to the best of his knowledge and belief, and that he subscribes said petition in his capacity as President of Stanley Laboratories, Inc., being thereunto duly authorized, and as an individual.

EDWARD A. BACHMAN

Subscribed and sworn before me this 27th day of May, 1942.

[Seal] LEO LEVENSON,

Notary Public in and for said County and State.

My commission expires 4-14-46.

#### PETITIONER'S EXHIBIT A

[Here follows Findings of Facts and Conclusion, set out as Petitioner's Exhibit A, which is previously printed on pages 21-29 of this record.]

#### PETITIONER'S EXHIBIT B

[Here follows Order to Cease and Desist which is set out as Petitioner's Exhibit B, which is previously printed on pages 30-33 of this record.]

[Endorsed]: Filed May 23, 1942. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH  
PETITIONERS RELY

Come now your petitioners in the above entitled cause and respectfully submit to this court a statement of points upon which petitioners intend to rely, as follows:

1. That the findings of fact and conclusions of law are not based upon substantial evidence.

2. That the order to cease and desist issued by the Federal Trade Commission is not supported by substantial evidence.

3. That the findings of fact, conclusions of law, and order to cease and desist are based upon a distorted construction of the testimony, and not upon a reasonable view of all the evidence in the case.

4. That the findings of fact, conclusions of law, and the order to cease and desist issued by the Federal Trade Commission, insofar as the same pertain to the product MD Medicated Douche Powder, are based upon testimony of Commission witnesses, which testimony was secured by unfair and improper methods and was inadmissible in evidence.

5. That the findings of fact, conclusions of law, and order to cease and desist issued by the Commission, insofar as the same pertain to the product MD Medicated Douche Powder, was based wholly upon testimony of Commission witnesses secured by unfair and improper methods as aforesaid, and



completely ignore undisputed testimony of numerous witnesses for respondents.

6. That the stipulation filed by respondents on January 31, 1940, makes a cease and desist order improper and unnecessary in this cause.

7. That the motion of respondents to strike certain testimony should be granted in full.

8. That the order to cease and desist is not supported by the findings of fact or the conclusions of the Commission.

Respectfully submitted,

LEO LEVENSON, Esquire

Spalding Building

Portland, Oregon

JAMES J. HAYDEN, Esquire

1323-18th Street, N.W.

Washington, D. C.

Attorneys for petitioners.

[Endorsed]: Filed June 17, 1943. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF THE TRAN-  
SCRIPT OF THE RECORD TO BE  
PRINTED

1. Complaint.
2. Answer.
3. Stipulations.
4. Testimony as follows:

Page 2, line 1 to page 9, line 9.

Page 11, line 15 to page 11, line 18.  
Page 15, line 15 to page 16, line 12.  
Page 24, line 2 to page 29, line 14.  
Page 30, line 18 to page 30, line 25.  
Page 31, line 4 to page 38, line 20.  
Page 39, line 13 to page 50, line 1.  
Page 51, line 15 to page 63, line 7.  
Page 65, line 1 to page 72, line 16.  
Page 79, line 12 to page 90, line 20.  
Page 100, line 3 to page 119, line 11.  
Page 123, line 17 to page 164, line 7.  
Page 165, line 5 to page 190, line 1.  
Page 206A, line 10 to page 219, line 12.  
Page 227, line 7 to page 234, line 15.  
Page 240, line 19 to page 243, line 3.  
Page 243, line 18 to page 245, line 11.  
Page 246, line 11 to page 249, line 13.  
Page 249, line 23 to page 252, line 25.  
Page 253, line 10 to page 257, line 1.  
Page 259, line 22 to page 265, line 21.  
Page 276, line 11 to page 285, line 1.  
Page 287, line 12 to page 290, line 21.  
Page 293, line 3 to page 298, line 2.  
Page 304, line 1 to page 320, line 22.  
Page 321, line 15 to page 326, line 23.  
Page 329, line 12 to page 333, line 24.  
Page 336, line 9 to page 341, line 13.  
Page 357, line 16 to page 360, line 18.  
Page 361, line 4 to page 363, line 16.  
Page 367, line 1 to page 391, line 20.

5. Order Denying Motion to Strike Testimony  
of Edward A. Bachman, Dr. Norman A. David, Dr.

Albert Holman, Dr. Thomas R. Montgomery, Dr. Frank Clancy and Dr. R. Philip Smith, and allowing Motion to Strike Testimony of F. R. Stipe.

6. Findings of fact and conclusions.
7. Order to cease and desist.
8. This designation of parts of the record.

LEO LEVENSON, Esquire

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JAMES J. HAYDEN, Esquire

1323-18th Street, N.W.

Washington, D. C.

Attorneys for petitioners.

[Endorsed]: Filed June 17, 1942. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

**RESPONDENT'S DESIGNATION OF ADDITIONAL PORTIONS OF TRANSCRIPT TO BE PRINTED**

Respondent respectfully requests Paul P. O'Brien, Esq., Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to print as the record for review in this proceeding in addition to or in clarification of petitioners' designation of portions of the record to be printed, the following:

1. Stipulation as to certain facts, dated Oct. 10, 1941.
2. Testimony as follows:

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Dr. R. Phillip Smith	342	4-24		
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Mrs. Sloan Crofton	357	10-15		
Mrs. Ethel Turnham	360	22	361	3

### 3. Excerpts from Exhibits:

Com. Exs. S-A-B, 25-A-B, 26-A-B, 37-A-B, 39-A-B:

“A Valuable Prescription for Discriminating Women \* \* \* produced for discriminating modern women who desire a sanitary and dependable douche to insure their personal hygiene. It is but recently that scientific research has developed new and improved methods to safeguard the health and happiness of married women. Endorsed by physicians and surgeons. M. D. Medicated Douche Powder not only cleans the vagina, and soothes the delicate membrane tissue, but it has the added advantage of the protective action of oxyquinolin sulphate, a

dependable safeguard. Because of its many other beneficial uses, 'M.D.' is also a very valuable household remedy \* \* \* for cuts, sores and burns."

Com. Exs. 12, 13:

"M. D. Medicated Douche Powder, endorsed by leading physicians and surgeons, is a germicide—soothing and cooling to delicate membranes with the addition of oxyquinolin sulphate—a reliable safeguard."

Com. Ex. 12:

"Medical science now answers the problems of millions of women with a truly effective, reliable antiseptic powder."

Com. Ex. 15:

"It relieves women of fatigue and the annoying discharge, often occasioned by all day standing."

4. Exhibits:

Commission's Exhibit 20.

Respondents' (Petitioners') Exhibits 1 and 2.

5. This designation.

JOSEPH J. SMITH, JR.,

Assistant Chief Counsel, Federal Trade Commission.

[Endorsed]: Filed Mar. 10, 1943. Paul P. O'Brien, Clerk.